S. HRG. 98-59

NOMINATIONS OF MARGARET M. HECKLER AND JOHN A. SVAHN

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE
NINETY-EIGHTH CONGRESS

FIRST SESSION

NOMINATIONS OF MARGARET M. HECKLER, TO BE SECRETARY OF HHS AND JOHN A. SVAHN, TO BE UNDER SECRETARY OF HHS

FEBRUARY 25, 1983

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
18-037 O WASHINGTON : 1983

536-27

COMMITTEE ON FINANCE

ROBERT J. DOLE, Kansas, *Chairman*

BOB PACKWOOD, Oregon	RUSSELL B. LONG, Louisiana
WILLIAM V. ROTH, JR., Delaware	LLOYD BENTSEN, Texas
JOHN C. DANFORTH, Missouri	SPARK M. MATSUNAGA, Hawaii
JOHN H. CHAFEE, Rhode Island	DANIEL PATRICK MOYNIHAN, New York
JOHN HEINZ, Pennsylvania	MAX BAUCUS, Montana
MALCOLM WALLOP, Wyoming	DAVID L. BOREN, Oklahoma
DAVID DURENBERGER, Minnesota	BILL BRADLEY, New Jersey
WILLIAM L. ARMSTRONG, Colorado	GEORGE J. MITCHELL, Maine
STEVEN D. SYMMS, Idaho	DAVID PRYOR, Arkansas
CHARLES E. GRASSLEY, Iowa	

ROBERT E. LIGHTHIZER, *Chief Counsel*
MICHAEL STERN, *Minority Staff Director*

CONTENTS

NOMINEES

	Page
Margaret M. Heckler	12
John A. Svahn	43

ADDITIONAL INFORMATION

Committee press release	1
Opening statement of Senator Dole	1
Biographical sketch of Margaret M. Heckler	4
Opening statement of Margaret M. Heckler	12
Letters from the Office of Government Ethics	11, 44
Article from the Washington Post, February 17, 1983	19
Questions from:	
Senator Moynihan	34
Senator Packwood	38
Senator Heinz	39
Biographical sketch of John A. Svahn	43

COMMUNICATION

Club of Life	78
Letter to Senator George Mitchell from HHS	39

NOMINATIONS OF MARGARET M. HECKLER AND JOHN A. SVAHN

FRIDAY, FEBRUARY 25, 1983

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Robert Dole (chairman of the committee) presiding.

Present: Senators Dole, Packwood, Chafee, Long, Moynihan, Baucus, Bradley, Mitchell, Pryor, Hawkins, Kennedy, and Kassebaum.

[The committee press release and Senator Dole's opening statement follow:]

[Press release No. 83-112]

SENATE COMMITTEE ON FINANCE SCHEDULES HEARING ON NOMINATIONS OF MARGARET M. HECKLER AND JOHN A. SVAHN

The Honorable Robert J. Dole, Chairman of the Committee on Finance, announced today that the Committee has scheduled a hearing on the nominations of Margaret M. Heckler and John A. Svahn to be Secretary and Undersecretary, respectively, of the Department of Health and Human Services.

The hearing will begin at 10 a.m. on February 25, 1983, in Room SD-215 of the Dirksen Senate Office Building.

The Committee will meet in executive session on Wednesday, March 2, to consider the nominations.

OPENING STATEMENT OF SENATOR BOB DOLE

It is a great pleasure for me to welcome to the Committee on Finance Margaret M. Heckler and John A. Svahn, who have been nominated to be Secretary and Undersecretary, respectively, of the Department of Health and Human Services. I would also like to welcome Mrs. Heckler's daughters, Belinda and Alison. Also with us are Mr. Svahn's wife Jill, and their children, John and Kirsten. In addition, let me welcome the senior Senator from Massachusetts, the Senator from Florida, and my fellow Senator from Kansas, all of whom will be introducing the nominee for Secretary. We are delighted to have you all here.

I'm sure many of my colleagues are familiar with Mrs. Heckler's work during her years in Congress, as I am, and can fully appreciate the enormous task which lies before her. Having been nominated to the post of Secretary, she is preparing to head the largest Government agency in the United States, with a budget ranked third largest in the world. There are a number of important issues pertaining to the programs under the jurisdiction of the Department of Health and Human Services which are of great interest to the Finance Committee; particularly the social security, medicare, and medicaid programs. I look forward to our discussions with Mrs. Heckler on some of these matters this morning.

Mr. Svahn, as I'm sure my colleagues are aware, is currently Commissioner of the Social Security Administration. We have worked closely with Mr. Svahn in his present capacity over the past few years in our efforts to secure the financial health

of the social security program, and have found him to be of great assistance to us. Mr. Svahn brings with him to the position of Undersecretary extensive experience administering a large government program, experience he will surely find helpful in assisting the new Secretary.

I believe the members of the committee have all been provided with the biographical material on Mrs. Heckler and Mr. Svahn.

I would also say that I have reviewed the disclosure forms for the two nominees, and the material that Mrs. Heckler and Mr. Svahn have filed with the Office of Government Ethics. I am satisfied that there are no problems in this area. I have also been informed that the Director of the Office of Government Ethics has sent a letter approving both nominees' compliance with the Ethics in Government Act. That letter will be made a part of the record. I have several questions, which I would like to discuss with you following your statements.

The CHAIRMAN. Let me say, it is a great pleasure for me to welcome to the Committee on Finance Margaret Heckler and John Svahn, who have been nominated to be Secretary and Under Secretary, respectively, of the Department of Health and Human Services. I would like to also welcome Mrs. Heckler's daughters. I think they are right behind you there, Belinda and Alison. And also I think Mr. Svahn has his family here, and we will introduce them later.

We are delighted you are here. We have a number of very difficult questions we have been working on for the past several weeks, and we want to get to those.

I understand, Mrs. Heckler, you have some stalwarts along who want to make introductory statements, is that correct?

Mrs. HECKLER. I do.

Senator KENNEDY. If I could, Mr. Chairman, as the nominee has pointed out, she hopes that she will be as well treated here at this committee as Secretary Dole was when she was before your committee. [Laughter.]

Let me just at the outset say what a real pleasure it is for me to have an opportunity to present someone who I am sure is familiar to the members of the committee and to the rest of the Senate and certainly to the Congress of the United States.

This nominee follows a very proud tradition of our State of bipartisan public service. There have been scores of individuals who have served both in the Congress, both political parties, and have served administrations of different political parties well over the history of this Nation. And this nominee I know will make her mark.

Peg Heckler lost a congressional district in the last election, but she has with this nomination gained a very large constituency and a very important constituency. I think if there is one agency of Government where the American people look to for help, it is the HHS.

That agency really bears the responsibility for insuring that the safety net is truly going to be a safety net. Young children, the handicapped, students, elderly people, those in greatest need, look to this agency and to its leadership for a helping hand.

And now, given the economic plight of this Nation, there are more people in need than perhaps at any other time in the history of our country. So this agency is of enormous importance and consequence.

I am convinced that Peg Heckler will administer that agency with fairness and compassion. We have served in the Congress over

a period of 16 years. There have been a number of important issues which we have differed on, but there is no question that her record in the Congress has been one of very considerable ability. I think we can all be convinced that there will be no EPA situation on Peg Heckler's watch at HHS.

So I am proud to be able to present to this committee President Reagan's nominee and worthy successor to Dick Schweiker, and urge that this committee and that the Senate move to an early approval of her nomination.

The CHAIRMAN. Thank you very much, Senator Kennedy.

Senator Kassebaum.

Senator KASSEBAUM. It is always a pleasure to appear before my senior Senator, but I was especially honored when Peg called and asked if I would be here this morning, one, because as the dean of the women serving in Congress I was honored to have worked with her for 4 years in the time that I have been here, and I know that Margaret Heckler will be a distinguished Secretary of Health and Human Services.

She has proven to be always a compassionate fighter, and I know that she will carry that energy and commitment and compassion in her responsibilities at Health and Human Services in the same way that she has done the 16 years that she has so ably represented a wider constituency than just her district in Massachusetts.

And so, all the best, Peg.

The CHAIRMAN. Thank you, Senator Kassebaum.

Senator Hawkins.

Senator HAWKINS. It is an honor to appear before my colleagues, Mr. Chairman, and unusual, I know, for a Senator not from the State of the nominee to usually appear to say wonderful things about the person chosen by the President of the United States. But I have worked for at least 16 years with Peg Heckler in Republican politics and I, like Peggy, come from a Democrat State but am registered in the other party so we can give the people a choice, and we therefore have been pioneers in many other walks of life.

She again is setting the pace for women everywhere, as is Secretary Dole. And I serve with Senator Kennedy here. He is the ranking member on Labor and Human Resources, which works constantly with the Secretary. And I must say that my State of Florida has its share of problems.

I became intimately acquainted and concerned constantly and talked almost daily to Secretary Schweiker because of the high proportion of senior citizens that live in Florida, the immigrants that landed on our shores. So suddenly all of those problems were dumped in Florida's lap. And I must say, we transferred them with quite a bit of, I thought, compassion with Senator Schweiker.

Peggy Heckler will be a compassionate, sensitive Secretary to a Department that I have great concern for. As Senator Kennedy has pointed out, because of the elderly and the ill and the youth and all those that need a helping hand, we must have a compassionate Secretary.

And I do salute the President for choosing as able an administrator and competent nominee as Peggy Heckler, and would recommend her highly to this committee to endorse.

The CHAIRMAN. Thank you very much.

I wonder, should we excuse the other Senators. And Peggy, before we call on you, I want to ask my colleagues if they would like to make any brief introductory or preliminary statements.

Senator Long.

Senator LONG. No, thank you, Mr. Chairman.

The CHAIRMAN. Senator Chafee?

[No response.]

The CHAIRMAN. Senator Moynihan?

Senator MOYNIHAN. No, thank you, Mr. Chairman.

The CHAIRMAN. Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman.

I want to welcome a neighbor here who I have had the privilege of knowing ever since she served in the State legislature in Massachusetts, so that goes back some years, and we have had the privilege of working together over that time.

And I think the President has made an outstanding selection to head up a very, very difficult task. Without degrading in any way any of the other Cabinet posts, I do not think there is a single position that has more difficult challenges and problems, particularly when we are operating under fiscal constraints, as we currently are.

So he has chosen, as the others have said, a woman of compassion, a person of compassion, but also she is hardheaded and realistic, and I believe will do an outstanding job in this most challenging of positions.

So, Mrs. Heckler, we are delighted you are here and proud that somebody from our region has been selected for this post.

Thank you.

The CHAIRMAN. Thank you, Senator Chafee.

Mrs. Heckler, do you have a statement?

[The biographical sketch, an opening statement of Mrs. Heckler, and a letter from the Office of Government Ethics follow:]

BIOGRAPHICAL SKETCH OF MARGARET M. HECKLER, SECRETARY-DESIGNATE OF HEALTH AND HUMAN SERVICES

Margaret M. Heckler was nominated as Secretary of Health and Human Services by President Reagan on January 12, 1983.

Mrs. Heckler had served in the U.S. House of Representatives for 16 years after being elected in 1966, and represented Massachusetts 10th District through eight terms. She was the senior ranking woman in Congress.

In the Congress, Mrs. Heckler served on the Joint Economic Committee, and the Committees of Science and Technology, Veterans' Affairs, and the Select Committee on Aging. She held key positions on various subcommittees as Vice-Chair of Agriculture and Trade, ranking Republican on Education, Training and Employment, and second ranking GOP member on Hospitals and Health Care. On these Committees, Mrs. Heckler was heavily involved in legislation on health care, child care, nutrition, and geriatrics. She authored Title III of Public Law 96-330, Geriatrics, Research and Health Care, which established geriatric centers within the Veterans Administration. As a member of the Banking Committee she authored the Equal Credit Opportunity Act which assured women equal access to credit. In 1976, as one of 11 women in Congress, she was the co-founder of the Congressional Caucus for Women's Issues which she co-chaired through 1982.

Mrs. Heckler began her political career as the first women elected to the Commonwealth of Massachusetts' Governor's Council on which she served for two terms before her election to Congress.

The Secretary-Designate was born Margaret Mary O'Shaughnessy in Flushing, New York. She attented Albertus Magnus College where she received her Bachelor of Arts in 1953. She was selected as U.S. Student Representative to the University

of Leiden, Holland. She attended Boston College Law School, was an editor of the Law Review there, and was the only woman in the graduating class of 1956.

Following college, Mrs. Heckler practiced as a trial attorney. She is a member of Bar Associations of many states, and has been admitted to practice before the U.S. Supreme Court.

The Secretary-Designate has been married for 30 years to John M. Heckler and they have three children: Belinda, Alison and John.

Among Mrs. Heckler's honorary degrees are those from: Northeastern University, Stonehill College, Emmanuel College, Regis College, St. Bonaventure University, Boston College, Wheaton College, and Assumption College.

18-037 O - 83 -2

STATEMENT OF

MARGARET M. HECKLER

SECRETARY-DESIGNATE OF HEALTH AND HUMAN SERVICES

FOR THE LAST 16 YEARS, HEARING ROOMS LIKE THIS ONE ON CAPITOL HILL HAVE BEEN MY HOME. BUT I APPEAR BEFORE YOU THIS MORNING NOT AS A CONGRESSIONAL COLLEAGUE -- BUT AS ONE WHO WITH YOUR ADVICE AND CONSENT -- WILL BE SERVING THE PEOPLE OF THIS COUNTRY AND OUR PRESIDENT AS THE SECRETARY OF HEALTH AND HUMAN SERVICES.

I AM DEEPLY HONORED THAT PRESIDENT REAGAN HAS CHOSEN ME FOR THIS POSITION. THE ENORMITY OF THE CHALLENGE WHICH FACES ME IS HUMBLING. THE HEALTH AND HUMAN SERVICES DEPARTMENT HAS THE THIRD LARGEST BUDGET IN THE WORLD. IT EMPLOYS 142,000 PEOPLE, AND DIRECTLY SERVES OVER 50 MILLION OF THE AMERICAN PEOPLE. IT IS THE HELPING HAND WHICH MILLIONS OF OUR ELDERLY, SICK, AND NEEDY CITIZENS GRASP IN HOPE, FRIENDSHIP, AND CARING.

SINCE JANUARY 1981, PRESIDENT REAGAN HAS WORKED HARD TO REDEEM A PLEDGE MADE TO THE AMERICAN PEOPLE: TO REFORM THE VAST NETWORK OF HEALTH AND HUMAN SERVICES PROGRAMS. WORKING CLOSELY WITH THE CONGRESS, HE HAS MADE GREAT STRIDES IN ELIMINATING WASTE, FRAUD, AND ABUSE; AND IN REDUCING THE BURDEN ON AMERICAN TAXPAYERS WHILE STILL HONORING OUR COMMITMENT TO THE TRULY NEEDY. THIS TASK IS AN AMBITIOUS ONE, WITH ITS SHARE OF CONTROVERSY AS WELL AS ITS SHARE OF SUCCESS. CHANGE OF THIS MAGNITUDE IS ALWAYS CONTROVERSIAL.

IN THIS CASE, THE EFFORT TO REFORM HEALTH AND HUMAN SERVICES PROGRAMS HAS LED TO A VIGOROUS, AND I BELIEVE, HEALTHY NATIONAL DEBATE ON HOW BETTER TO BRING OUR BURGEONING SOCIAL SERVICES PROGRAMS INTO LINE WITH OUR ABILITY TO PAY FOR THEM. I CONGRATULATE FORMER SECRETARY SCHWEIKER ON THE EXCELLENT CONTRIBUTION HE HAS MADE TO THIS ENDEAVOR.

I FULLY RECOGNIZE THE SERIOUSNESS AND THE DIFFICULTY OF THE TASK: IT IS THE GREATEST CHALLENGE OF MY LIFE. I AM CONFIDENT THAT MY 20 YEARS OF PUBLIC SERVICE WILL ENABLE ME TO MEET THIS CHALLENGE -- TO SERVE THE PRESIDENT AND THE PEOPLE OF THE UNITED STATES WITH COMPASSION AND WITH FORESIGHT; TO WORK WITH THE CONGRESS HONESTLY AND DIRECTLY.

FOR 16 YEARS I WORKED WITH MANY OF YOU AT THIS END OF PENNSYLVANIA AVENUE TO HELP WRITE LAWS WHICH WERE RESPONSIVE TO THE PRESENT AND FUTURE NEEDS OF THE AMERICAN PEOPLE.

IF CONFIRMED BY THE SENATE, I WILL BE CHARTING A NEW COURSE: MAKING THOSE LAWS WORK. IN 50 STATES. IN THOUSANDS OF CITIES AND TOWNS. FOR MILLIONS OF PEOPLE.

THAT MEANS -- FIRST OF ALL -- KEEPING THE LINES OF FRIENDSHIP, COOPERATION, AND CONSULTATION OPEN WITH CONGRESS. YOUR EXPERIENCE AND INSIGHT CAN BE INVALUABLE TO A MEMBER OF THE CABINET. I KNOW THAT; I WON'T FORGET IT.

I HAVE SPENT 16 YEARS IN CONGRESS LISTENING TO CONSTITUENTS WHO WERE FRUSTRATED WITH GOVERNMENT BUREAUCRACY -- AND WHO WANT FASTER, BETTER, MORE HUMANE SERVICE. NOW, I FINALLY HAVE THE OPPORTUNITY TO USE THAT FIRST-HAND UNDERSTANDING OF WHAT HAPPENS TO THE ONE QUARTER OF ALL AMERICANS WHO RECEIVE ASSISTANCE THROUGH THIS DEPARTMENT.

I INTEND TO PROVIDE AN ADDITIONAL SET OF SENSITIVE EYES AND EARS FOR THE PRESIDENT OF THE UNITED STATES. THOUGH MY SPEECHES HERE IN WASHINGTON AND THROUGHOUT THE COUNTRY WILL CERTAINLY ENUNCIATE POLICIES AND PLANS, I WILL NEVER STOP LISTENING AND TRYING TO LEARN:

-- ABOUT PEOPLE'S NEEDS

-- ABOUT MAKING HEALTH AND HUMAN SERVICES MORE RESPONSIVE AND RESPONSIBLE

-- ABOUT HOW TO ELIMINATE WASTE, FRAUD AND CALLOUSNESS.

FINALLY, I HAVE ALWAYS BELIEVED THAT COMPASSION AND REALISM ARE NOT MUTUALLY EXCLUSIVE. EVEN IN A TIME OF FEWER RESOURCES, I BELIEVE WE CAN DO A BETTER JOB WITH WHAT WE HAVE. BUT WITHOUT A STRONG ECONOMY, NO ONE WILL BE WELL SERVED.

THIS PHILOSOPHY WILL GUIDE ME AS I WORK WITH YOU TO BALANCE OUR NATION'S DESIRE TO PROVIDE HUMAN SERVICES WITH OUR ABILITY TO PAY FOR THEM.

A MYRIAD OF ISSUES WILL DEMAND MY CAREFUL ATTENTION. BUT I WISH TO SET FORTH TWO BROAD GOALS FOR MY ADMINISTRATION, IF I AM CONFIRMED BY THE SENATE.

FIRST, I WANT THE HEALTH AND HUMAN SERVICES DEPARTMENT TO FOCUS MORE ON LONG-RANGE PROBLEMS AND LONG-RANGE SOLUTIONS.

TOO OFTEN IN GOVERNMENT, CRISES AND DAILY FUNCTIONS AFFORD SO MUCH TIME THAT WE FAIL TO CONSIDER THE LONG-TERM IMPLICATIONS OF OUR ACTIONS. YESTERDAY'S FAILURE TO PLAN BECOMES TODAY'S PROBLEM AND TOMORROW'S CRISIS. WE NO LONGER CAN AFFORD THE LUXURY OF SHORT-SIGHTEDNESS. I HOPE TO INTRODUCE A PROACTIVE PHILOSOPHY TO THE DEPARTMENT: ONE THAT ASKS NOT "HOW CAN WE FIX IT UNTIL TOMORROW?", BUT RATHER, "HOW CAN WE REBUILD FOR THE FUTURE?"

RECENTLY, WE HAVE SEEN THAT THIS KIND OF APPROACH YIELDS SENSIBLE, PRACTICAL ANSWERS: AND I PAUSE TO COMMEND THE OUTSTANDING WORK OF THE BIPARTISAN COMMISSION ON SOCIAL SECURITY REFORM ON WHICH THE DISTINGUISHED CHAIRMAN OF THIS COMMITTEE, SENATOR DOLE, AND HIS COLLEAGUES, SENATOR MOYNIHAN AND SENATOR ARMSTRONG, SERVED SO NOBLY. THEY HAVE GIVEN US THE ABILITY TO TAKE STEPS NOW SO THAT WE MAY PRESERVE SOCIAL SECURITY IN THE FUTURE.

SECOND, I WANT TO BE A CATALYST FOR CARING IN AMERICA: FOR THE YOUNG, THE ELDERLY, THE SICK, THE HANDICAPPED AND THE NEEDY. I KNOW WHAT GOVERNMENT CAN DO -- AND I ALSO KNOW THAT GOVERNMENT CAN'T DO IT ALL. AS SECRETARY OF THE LARGEST GOVERNMENT AGENCY IN THE WORLD, I WILL STRIVE TO IGNITE THE COLLECTIVE WILL OF THE NATION -- AND THE GOODWILL OF THE AVERAGE AMERICAN -- TO ACHIEVE OUR COMMON GOAL: TO TREASURE THE YOUNG AND CHERISH THE OLD.

WITH THESE GOALS IN MIND, I WILL CARRY OUT THE DUTIES OF THE SECRETARY OF HEALTH AND HUMAN SERVICES ENTHUSIASTICALLY AND CONSCIENTIOUSLY; WORK WITH THE CONGRESS IN FRIENDSHIP AND GOOD FAITH; AND SERVE AND ADVISE THE PRESIDENT TO THE VERY BEST OF MY ABILITY. I ASK FOR GOD'S ASSISTANCE AS I UNDERTAKE THIS CHALLENGE.

THANK YOU MR. CHAIRMAN. I WILL BE HAPPY TO ANSWER QUESTIONS.

BEST COPY AVAILABLE

United States of America
Office of Government Ethics

Office of Personnel Management
Washington, D.C. 20415

FEB 24 1983

Honorable Robert Dole
Chairman, Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by **Margaret M. Heckler,** who has been nominated by President Reagan for the position of Secretary of the Department of Health and Human Services.

We have reviewed the report and have also obtained advice from the Department of Health and Human Services concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. In 1975 while a Member of Congress, Mrs. Heckler established a blind trust in order to remove herself from any question of conflict of interest with and from management of certain inherited assets. The Ethics in Government Act provides a procedure in Section 202(f)(7) for qualifying pre-Act blind trusts so that they might meet the blind trust requirements of the Act. We have been advised that Mrs. Heckler has agreed to a reformulation of her blind trust arrangement to bring it into compliance with the Act.

Subject to our qualification of the trust, we believe that Mrs. Heckler will be in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David R. Scott

David R. Scott
Acting Director

Enclosure

STATEMENT OF MARGARET M. HECKLER, SECRETARY-DESIGNATE OF HEALTH AND HUMAN SERVICES

Mrs. HECKLER. I do, Senator. I would like to say that when you have a phalanx such as that accompanying me today—with Senator Kennedy who came on his own motivation and was so gracious in presenting me, and my two women colleagues—obviously that should be of some persuasive value to the committee.

As Senator Kennedy said, in the last election a funny thing happened on the way to the election. I lost 145,000 constituents, but I gained 142,000 employees. And obviously, this was done through some magical way, and I think the Lord had his hand in it.

But coming before you at this moment is a great privilege and a great challenge to me. For 16 years, hearing rooms like this one on Capitol Hill have been my home. But I appear before you today, not as a congressional colleague, but as one who seeks your support and your advice and consent in the future, who will be serving the people of this country and our President as the Secretary of Health and Human Services.

I am deeply honored that President Reagan has chosen me as his Secretary of Health and Human Services. The enormity of the challenge is well-known to anybody who knows Washington. The Department has the largest budget in the world. It employs 142,000 people and directly serves over 50 million American people. It is the helping hand which millions of our elderly, sick, and needy citizens grasp in home, friendship, and caring.

Since January 1981, President Reagan has worked hard to redeem a pledge made to the American people to reform the vast network of Health and Human Services programs, and working closely with the Congress, he has made great strides in eliminating waste, fraud, and abuse and in reducing the burden on American taxpayers, while still honoring our commitment to the truly needy.

The task of this Department is an ambitious one, with its share of controversy as well as its share of success. Changes of the magnitude just seen are always controversial. In this case, the effort to reform Health and Human Services programs has led to a vigorous and I believe healthy national debate on how better to bring our burgeoning social services programs into line with our ability to pay for them.

I congratulate former Secretary Schweiker on the excellent contribution he has made to this endeavor. I fully recognize the seriousness and difficulty of the task. It is an understatement to say it is the greatest challenge of my life, but I am confident that my 20 years of public service will help me meet this challenge to serve the President and to serve the people of the United States with compassion and foresight, and to work with the Congress very directly and honestly.

For 16 years, I worked with many of you at this end of Pennsylvania Avenue to help write laws which are responsive to the present and future needs of the American people. And now, if confirmed by the Senate, I will be charting a new course making those laws work in 50 States, not just in Massachusetts, in thousands of cities and towns, for millions of people.

That means, first of all, keeping the lines of friendship, cooperation, and consultation open with the Congress. Your experience and insight can be invaluable to a member of the Cabinet. I know that from my prior congressional experience and I will not forget it.

I have spent 16 years in Congress listening to constituents, hearing about their needs, listening to their frustrations with Government bureaucracy, they who wanted and needed and deserved faster, better, more humane service. Now I finally have the opportunity to use that firsthand understanding of what happens with the one-quarter of all Americans who receive assistance through this Department.

I intend to provide an additional set of sensitive eyes and ears for the President of the United States, as I travel throughout the country, and here in Washington. I certainly will enunciate policies and plans, but I will never stop listening and trying to learn about people's needs, about making Health and Human Services more responsive and responsible, and about how to eliminate waste, fraud, and callousness from the Government.

Finally, I have always believed that compassion and realism are not mutually exclusive. Even in a time of fewer resources, I believe we can do a better job with what we have.

But certainly, I agree with President Reagan: Without a strong economy, no one will be well served. This philosophy will guide me as I work with you to balance our Nation's desire to provide human services with our ability to pay for them.

A myriad of issues will demand my careful attention, but I would set forth two broad goals if confirmed by the Senate. First, in my administration, I would want the Department of Health and Human Services to focus more on long-range problems and long-range solutions. Too often in Government, crises and daily functions absorb so much of our time that we fail to consider the long-range implications of our actions. Yesterday's failure to plan becomes today's problem and tomorrow's crisis.

We no longer can afford the luxury of shortsightedness. I hope to introduce a proactive philosophy to the Department, one that asks not "how can we fix it until tomorrow?" but rather "how can we rebuild it for the future?" Recently we have seen that this king of approach yields sensible, practical answers, and I pause to commend the outstanding work of the bipartisan Commission on Social Security Reform, on which the distinguished chairman of this committee, Senator Dole, and his colleagues Senator Moynihan, Senator Heinz, and Senator Armstrong have served so nobly.

I do agree with the recommendations of that Commission and support those recommendations, but I also may note for the record that its recommendations include options for the future and give this Congress the ability to take steps which will preserve social security, not in the short term, but in the long term.

Second, I would like to be a catalyst for caring in America, for the young, for the elderly, for the sick, for the handicapped, for the needy. I know what Government can do and I also know that Government cannot do it all. I feel that as Secretary of the largest Government agency in the world, it will be my role to ignite the collective will of the Nation and the goodwill of the average Ameri-

can to work toward achieving our common goal, to treasure the young and to cherish the elderly.

With these goals in mind, I will, if confirmed, carry out the duties of the Secretary of Health and Human Services enthusiastically and conscientiously. I will work with the Congress in friendship and good faith with respect for the experience which resides in this distinguished body. And I will seek to serve and advise the President to the very best of my ability.

At this moment of incredible challenge, I ask certainly for your support, but as always for God's assistance in undertaking this challenge.

Thank you, Mr. Chairman, for this opportunity.

The CHAIRMAN. Thank you, Mrs. Heckler.

Under our early bird rule, I will recognize Senator Long.

Senator LONG. Mrs. Heckler, 2 years ago we changed the welfare law to permit States to provide work experience programs for welfare recipients. I want to ask two questions about that: One, do you know how the program is working; and two, do you support the basic idea?

Mrs. HECKLER. I will answer the second first. I do support it, and the program has yielded some very positive results, far greater than would have been anticipated. I think that the thrust is probably the first constructive step toward breaking the cycle of dependency on welfare, and I think was one of the goals of the President in supporting the workfare program. In fact in the new budget recommendations which came to the Congress a few weeks ago, this will be expanded and made mandatory for all States. One of his goals was to deal with welfare in the long run and to develop more self-sufficiency on the part of individuals.

We have in the Department, in the short time that I have been there, collected data on the workfare experience in many States, and the comments are very heartwarming. There was one woman who said "I now feel I have dignity as a citizen. I feel that I am making a contribution, and it has provided me with a new role."

We find many heartwarming comments, and the experiences seem to be extremely productive, as they were designed to be, for the individual. I think one of the reasons for this is that the workfare programs have not dovetailed with make-work, but have been genuinely channeled into productive capacities, into meeting needs that would not otherwise be met, such as providing medical transportation for the elderly in one State, assistance in libraries, public assistance in other areas.

This has not been your usual "rake-the-leaves" kind of utilization of human talent. I think it is an appropriate thing. There are exceptions, certainly: mothers with children under the age of 3; if day care were not available between 3 and 6, based on the day care opportunities; and certainly there are others who are disabled and not capable of working.

But for the vast number of those on the welfare rolls, I think their utilization in a productive way cannot only help our society, but certainly help them develop a different image of themselves, make a contribution and go on to find employment.

Senator LONG. Mrs. Heckler, I hope in time I can convince you and the administration that my approach toward that is somewhat

different than the administration's approach. My thought is that we should not give somebody a check and then tell them they have got to work it off. That sounds like slave labor. They have got to work for something when they have already been given the grant, as a gift, you might say.

It seems to me as though we ought to say to people, we will give you a check as a grant one time. That is to hold hide and hair together until you can earn your first check. From that point forward, you will be paid for work that you do, and we ought to then pay them if they show up and do something and do not pay them for doing nothing.

I think that this approach was not being done in most States merely because they felt they might have to go to court about it to prove that they have a right to do that. So we specifically amended the law to say that they have the right to do it that way, and I think it is far better to do it that way.

I take issue with you when you suggest that a mother with children under 3 cannot be in that work force. I have had some very wonderful mothers working in my office who had children under 3, and they did a great job for us. If they cannot do any better, they can look after some other mother's children as well as theirs, just take in another child to look after while the mother goes and takes a job somewhere.

There are all kinds of admirable women in America who have children less than 3 years old and who are making a contribution. I helped amend the laws down through the years, and I think you helped us do this, to make it very attractive to hire mothers in day care centers. And there is no reason why a mother with a child under 3 cannot take the child to the day care center with her and help look after her own child along with others.

I just do not think that we ought to take the attitude that a mother cannot work because she has a child under 3.

Mrs. HECKLER. Senator, perhaps I did not make my position clear. I said that if a mother had a child under 3 and there were no day care available, then she should not be included in the workfare program. But under many circumstances there will be day care facilities available, and she also could be a participant in the day care, as you yourself suggest.

But as a working mother myself who has children, and who worked before they were age 3, I do definitely realize, that mothers can be part of the work force. I also realize this as one who has hired and had members of my congressional staff who are mothers with young children, and who had very good day care arrangements.

I do think we have to provide for the children, and day care should be made more accessible under those circumstances. And the woman could be part of the day care arrangement herself, but the day care is an essential element in terms of freeing a woman to be able to enter the work force.

Senator LONG. Could I just ask one further question, Mr. Chairman?

The CHAIRMAN. Sure.

Senator LONG. I was a poverty lawyer before the Government started paying poverty lawyers. [Laughter.]

And I know what it is to represent some pitiful woman seeking to look after her little children and trying to pursue that father to make him pay to support that family when he is well able to do so. And I know what it is to represent some of those sorry rascals, too. I've been on both sides of that kind of situation. [Laughter.]

When I was on the defending side, what the father would usually say was that if they ordered him to pay, he was going to leave the State.

We have worked to pass laws where if I were doing the same thing today I would have a right to claim the support of my State and Federal Government to help look after that mother and those children, rather than having to make the taxpayers do that. And the program is doing very well indeed.

Now, are you familiar with that program?

Mrs. HECKLER. I am very familiar with it.

Senator LONG. Can we count on you to pursue that? In my judgment, what is being done can be improved on. I know that we can get a lot more. In Louisiana alone last year we increased the collections 38 percent. I say "we", but I did not have a blessed thing to do with it. They did it in the State. I helped pass a law to do it, and they have got to be doing a good job.

But I want to know if you are going to pursue that program as others have pursued it.

Mrs. HECKLER. Senator, I am also a lawyer and I also handled many such cases in which I represented the wife. But I was always chagrined to receive a child-support decree which I knew was, in effect, an empty paper bag. And I am extremely familiar with that and I can assure you I will indeed pursue the enforcement of child support with a vengeance.

Senator LONG. Thank you very much.

The CHAIRMAN. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

Mrs. Heckler, the parental notification situation has come before the HHS, where HHS has decided that they are for parental notification and a Federal judge has put that on hold. What will be your position on that? Will you insist on challenging the Federal judge's decision? What will be your position?

Mrs. HECKLER. The Department has already taken action on this and the issue has, as you know, gone to the courts. The Department is appealing the decision of the two Federal courts, and since the Department is now under a court injunction not to enforce the regulation, the law of course will be observed. The district offices have been informed that there is no enforcement to proceed until there has been judicial review and the issue has been resolved.

I will follow the law.

Senator CHAFEE. But the Department has already appealed that decision of the district judge?

Mrs. HECKLER. That is right.

Senator CHAFEE. I guess that was a temporary restraining order anyway, was it not?

Mrs. HECKLER. Yes.

Senator CHAFEE. And you will press that appeal?

Mrs. HECKLER. Yes. This issue was set as a matter of policy and has been established by the President. It was put into place under Secretary Schweiker and has been, I think, well debated and considered at the White House.

My own prior views were personal views; I am now playing a different role. Since this policy was set by and has the stamp of approval of the President, I will support this policy. However, I will not intervene on the issue as the appeal of the regulation is pursued through the legal process.

If the position of the Department prevails, then the regulation will be enforced. If that does not happen to be the final result, then the regulation will not be honored. So we are awaiting final court determination, and the Department is pursuing advocacy of the course and position which it has taken with the approval of the administration.

Senator CHAFEE. I see.

I would like to briefly discuss medicare. This is a problem where the costs are rising far more rapidly than other costs in the Department, and it is a matter that we have wrestled with here in this committee.

What route do you think we ought to follow? What suggestions do you have for us? Should there be a greater beneficiary paying of deductibles or cost-sharing? What suggestions do you have? And specifically, for example, the freeze on physician's reimbursement for 1 year, if you could address that, but as part of your overall answer.

Mrs. HECKLER. Well, obviously I think we are all familiar with the great budgetary strain in medicare funding and the fact that, although the President has succeeded with the help of the Congress in fighting inflation (and we have had enormous success in that regard, reducing the rate of inflation from 12.4 percent in 1980 to 3.8 percent at the latest count) the fact is in hospital costs and medical costs inflation has not been curtailed.

And the medicare increase has been annualized at 19 percent per year for the last 3 years, a hurry impact on the fund. In fact, the fund is definitely threatened with bankruptcy in 1986, unless the Congress acts and subsequently, as a result of the recommendations of the bipartisan Commission on Social Security, we will buy time and be able to, we feel, change the rate of dissipation or diminish it by an additional 2 years.

The President's prospective reimbursement for hospital costs proposal, for which we will fight in the Congress this year, is founded on an incentive-based system. It will hopefully reform the structure of the medicare system in terms of hospitals, will buy us another year, and we feel that other proposals that have been advanced and will be pursued by the administration and brought to the Congress will also buy us another year, so we see that we can stumble through the forthcoming period until the 1990's.

But we really should deal today with the major problems of medicare. The fact is that the prospective payment reimbursement will, I believe, make a very major difference, and I don't believe that we should really exclusively limit it to the hospitals.

So I would agree that we need the physicians pay cap for a year as part of providing the basis for getting these very, very high costs

under control and being equitable about it, not merely attacking one end.

Senator CHAFEE. My time is up, and I thank you.

I am all for the prospective reimbursement. I think it is going to make substantial changes, but frankly I do not think it is going to do all that is required to save that medicare fund.

Mrs. HECKLER. No. It is a beginning.

Senator CHAFEE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Moynihan.

Senator MOYNIHAN. Thank you, Mr. Chairman.

Let me welcome an old and good friend and say, the many felicitous notes in your opening remarks, none seem to be to me better than your saying that you hope to be a catalyst for caring in America. And those of us who have known you for so long are sure that you will be.

Let me, on that subject, though, return just a moment to the question generally known as welfare, which in your Department under the Social Security Act is the aid to families with dependent children. As you know and we have discussed, one child in three born in America in 1980 will be dependent upon that program for some period of time before they are age 18. It is, next to public school education, it is the largest Government program touching people, young people in the country.

Many of us on this committee were really shocked when the President 2 years ago proposed to transfer the AFDC program to the States as part of the new federalism, and we were reassured and we sensed your influence, which you may deny, that yesterday when he sent a new block grant program to the Congress this proposal was dropped. It is no longer there. The AFDC program is to remain part of the Social Security Act and remain your responsibility, and I for one am going to attribute that to your rising influence in the councils of caring.

But it remains a fact that more cuts, yet more cuts in AFDC payments, are coming along. I know the parents of these children may be what some people say they are, but they, the children, are only children.

Now, since 1970 the average payments to welfare families have dropped 13 percent—the only group in the country who have fallen behind the rest. In the last 2 years the administration has persuaded the Congress to cut AFDC by 13 percent. And now we have in the new budget a proposal for another $700 million in cuts, and the Washington Post, which is a reasonable newspaper and a good newspaper described these in an editorial that I showed you the other day simply as "dumb, mean budget cuts."

Now, can I ask that you will take a good hard look at them from the point of view of a person who does care, and I know you do?

Mrs. HECKLER. I do care, Senator. And I certainly intend to review all of the programs of the Department. But let me say that, while I do respect the *Washington Post*, it is not my Bible. [Laughter.]

And I really feel that the characterization of the President's program was fairly mean itself in that editorial and not entirely accu-

rate, and in fact I would like to submit the Departments response on this issue for the record.

[The material referred to follows:]

THE WASHINGTON POST, February 17, 1983

The Washington Post

AN INDEPENDENT NEWSPAPER

Dumb, Mean Budget Cuts

TUCKED AWAY in a small corner of the administration's 1984 budget are some strikingly mean-minded proposals to make the nation's poorest families poorer yet. The affected program is Aid to Families with Dependent Children. Even before the Reagan administration began its assault on social programs, welfare aid for families was a small and shrinking part of the federal budget. AFDC benefit levels are set by state governments, and there is no automatic adjustment for inflation. Since welfare families have no powerful defenders in state legislatures, average family welfare payments have been allowed to decline by more than 30 percent in purchasing power since 1970.

Federal budget cuts made in the last two years have accelerated these losses. AFDC has been reduced by 13 percent as a result of cuts made in that period. So far the biggest losers have been working poor families, most of which—contrary to administration suggestions—had incomes below the poverty line despite their work efforts. Now the administration proposes to cut federal AFDC spending by another $700 million.

Now, if you want to hear about truly dumb and mean attempts at savings, consider these. They would come from such things as reducing welfare benefits if families share quarters with friends or relatives, or if minor children manage to earn a little money. Families would also be denied help if the father left home to look for a job. Work requirements would be strengthened (in an economy in which 11.4 million people can't find work), but the already underfunded WIN program, which helps welfare parents find jobs and training, would be eliminated.

These changes might make some sense in a country with full employment and an adequate level of welfare aid. But how can anyone possibly consider cutting welfare for, say, a family of four in Texas whose total cash income is $140 a month just because that family is sharing living quarters with someone else? How else could they survive? And who would be so mean as to deny a child in that family the fruits of his labor if he is lucky enough to find a job? What sort of rationale could justify such rules?

Linda McMahon, the administration's welfare chief, may have supplied a clue to administration thinking on these matters in an interview with The New York Times last fall. In justifying the administration's previous cuts, she noted that their effects must be tolerable because "We're not seeing riots. We're not seeing people rushing the doors of Congress and the White House."

The idea that a scattered group of subsistence workers would jump on jets and storm the seat of government has its amusing aspect. Not so the notion that it's okay to take help from the poor just as long as they don't take to the streets and inconvenience the rest of the citizenry. Is there no longer anything to be said for simple human decency?

BEST COPY AVAILABLE

Mrs. HECKLER. I think as one looks at various segments of the reductions, the goal was certainly to preserve the safety net—to take care of the truly needy, and to cut out what might be an imbalance—to cut out the unfairness or programs or aspects of programs that have not been effective in terms of meeting the needs of the poor.

If one looks at the $30 and one-third provision that was earlier the subject of so much controversy, there are many who felt that by giving an extra bonus to the working poor we would be able to break the cycle of dependency. When this proposal was reviewed in the Department, I have just recently learned, the data indicated that it really did not achieve that.

It did not break the cycle of dependency at all, and so therefore, it was not cost effective. In fact, it provided a built-in inequity, because an individual with a family who was earning, say $15,000, could not become eligible for welfare, whereas someone else who received welfare would then take a job, make the same salary, and continue to receive welfare.

Senator MOYNIHAN. Margaret, may I just say—my time is running out—that we will be thoroughly respectful of that kind of evidence, that kind of open-minded inquiry. But what we hope we will not hear more from is the sort of evidence adduced by the present head of this particular program, who was asked, were the cuts having any effect, and said they cannot have had much effect, there have not been any riots.

That is not your standard.

Mrs. HECKLER. I will say that, Senator, you are going to get the facts from me, the facts, and let the facts determine justice. We are seeking equity and we are seeking compassion. We are balancing the needs of the poor and the needs of the economy and the taxpayer. And I think that we have to keep the safety net, but at a time of diminishing resources, equity has to be achieved and it has to be achieved based on fair data.

I will bring you the facts, sir.

Senator MOYNIHAN. I thank you.

The CHAIRMAN. Mrs. Heckler, I appreciate your comments concerning the National Commission on Social Security Reform, and I do believe that that ball is moving fairly rapidly, and that the compromise the Commission reached will be nearly intact when the bill passes and goes to the President. And that is largely due to efforts of Democrats and Republicans and the President.

There is one area we did not address that we should have addressed, and, well, we addressed in a very minor way, and that is some of the women's concerns in social security. I know the answer to the question but I am going to ask it in any event.

We have been looking at perhaps phasing in some other—or phasing out some other areas of discrimination in social security starting in 1990, when the trust fund is in a little better shape. And I have discussed this privately with Senator Moynihan a number of times. We have our staffs working on some of the inequities we hope to address now, but to have them phased in at a later time when we have more money in the trust fund.

Can we count on your support for that effort?

Mrs. HECKLER. Absolutely.

The CHAIRMAN. That is what I thought. [Laughter.]

Had you said no I would have been in real trouble. [Laughter.]

Mrs. HECKLER. I have not been the ranking woman in Congress so many years, having fought for the equity in this environment and in this country for women, to allow any inequities to be tolerated under my Department. And I would be very happy to work with you in the future on that.

The CHAIRMAN. Now, I am not going to ask you about withholding on interest and dividends. [Laughter.]

Unless you serve on a bank board. You are not on any bank board, are you?

Mrs. HECKLER. I have revealed my soul and I do not serve on a bank board.

The CHAIRMAN. Well, we are thankful for that. [Laughter.]

Anyway, I think, just so the record will be complete, what do you say to the Reaganites who said that you are not really a supporter of the President? In fact, CQ indicates that you have the highest opposition score of any Republican in the House to the President's programs.

Mrs. HECKLER. I think CQ might have taken 1 year and not looked at the other. But let me just say this: I served in the Congress under five Presidents and I have never, never admired a single President as much as I do President Reagan. I happen to feel this country is very fortunate to have this leader at the helm.

I think that we and the Congress serve different roles. We respond to different constituencies. As a Member of the House, I responded to one slice of Massachusetts, a very special piece of property and geography and a very special people. That district was changed subsequently, but the fact is that my reaction was to respond to Main Street in that congressional district.

Now I find myself in a different role, and I will be responding to Oregon and Rhode Island and Kansas and New York and Arkansas and certainly Louisiana. [Laughter.]

Senator Long takes such good care of Louisiana, I do not think he will need much help from me. [Laughter.]

Mrs. HECKLER. The fact is that I have a national constituency now. I think you, Senator, have served in the House and found your perspectives broadened by the dimension of representing the whole State in the Senate. And I think that is true. As I expand my constituency nationally, certainly many of the people that I served before are going to be the constituents of this new Department.

I will serve under a President whom I consider to be really very enlightened, whose vision has brought us to the point where we have made historic changes. And I think a rising tide lifts all ships; we are on a rising tide in America, and he has produced the momentum, with the help of the Congress, that will lead us into, I believe, a better, sounder future.

I have enormous respect for his ability. I certainly will differ with him, and as a member of his Cabinet I will express those kinds of views. But I also intend to follow his words, and not generally but very specifically. When his policy is set, I will do so with enthusiasm, because I feel basically that the broad outlines of philosophy that he has exhibited in terms of creating this, a new em-

phasis on achieving a sound economy and bringing inflation down and stemming the tide of over-regulation that has strangled America, these are all concepts I completely embrace and wholeheartedly do so.

I feel very privileged to serve with this President.

And CQ has been inaccurate before, but let me say I think my measure of loyalty will be as great or greater than any who have ever been members of his Cabinet.

The CHAIRMAN. Well, I appreciate that and I think it is good to have that on the record. It sounded like a nominating speech. [Laughter.]

Mrs. HECKLER. I would be honored to do so. [Laughter.]

And hopefully he will give us that opportunity in 2 years. [Laughter.]

The CHAIRMAN. There is a lot of time. [Laughter.]

But there are those who feel if you are not putting the Reagan button on, you are not really a Reagan supporter. And I think it is really good to have that on the record.

But I had better get off that subject. [Laughter.]

The CHAIRMAN. Senator Pryor.

Senator PRYOR. I did not know it was my time.

The CHAIRMAN. Yes; we move fast here. [Laughter.]

Senator PRYOR. Thank you. Thank you, Mr. Chairman. Mr. Chairman, I would like to say that it was my pleasure—I did not realize it was 16 years ago—I do not know where those years have gone—but it was my pleasure to be elected to the House of Representatives the same year as Mrs. Heckler. And I think that if nominated and approved for this job, action which I assume is forthcoming, that she will do a fine job.

But I would like to ask this question. We are going through an excruciating period right now with the Environmental Protection Agency, and it seems that possibly the right hand did not know what the left hand was doing. I think just as important as who runs a department and serves in the Cabinet-level position is, who will be running the store when that member of the Cabinet is not around.

For example, maybe if you are in a Cabinet meeting or maybe if you are out making a speech for the President, nominating the President somewhere, or if you are on a vacation or if you are on a mission for our country doing something, who is going to run the store at HHS for you?

Mrs. HECKLER. The Under Secretary has been named and designated by the President, and he will be in charge of "running the store" when I am not present.

Senator PRYOR. Now, he has been nominated, I understand, Mr. Svahn.

Mrs. HECKLER. Yes.

Senator PRYOR. So Mr. Svahn will be basically the most important person in the Department of HHS when you are not physically present.

Mrs. HECKLER. I would say so.

Senator PRYOR. He will have—basically, he will inherit the responsibilities of running the Department and making major policy decisions if you are not there.

Mrs. HECKLER. Well, Senator, I have never been known to reserve or allow major policy decisions to idle on the backburner. I certainly would intend to make major policy decisions myself.

Senator PRYOR. Have you had the opportunity to work with Mr. Svahn in the past?

Mrs. HECKLER. No; I have not.

Senator PRYOR. Have you had the opportunity to look at and to examine his record?

Mrs. HECKLER. I have heard some very fine things about his record, sir.

Senator PRYOR. Have you had the opportunity prior to this hearing to really sit down with Mr. Svahn and talk about the policies of HHS?

Mrs. HECKLER. We have had a number of sessions on that subject, yes.

Senator PRYOR. So you basically have a program and a plan in mind?

Mrs. HECKLER. I will say it has not been finished in the final details, but I think we will have a good working relationship.

Senator PRYOR. But basically, the President chose your No. 2 person at HHS, Margaret Heckler did not.

Mrs. HECKLER. Yes.

Senator PRYOR. Do you think that is extraordinary?

Mrs. HECKLER. Well, it has happened before and it has been done in many Departments, so it is not an unusual practice for this administration. In fact, Secretary Schweiker also had an Under Secretary who was chosen by the administration. So this is a pattern that has emerged.

Senator PRYOR. Did the President at any time ask you who you thought might be the best person to oversee that Department in your absence or to become the No. 2 person in the Department of Health and Human Services?

Mrs. HECKLER. No, he did not.

Senator PRYOR. Were you surprised when Mr. Svahn became the nominee for this position?

Mrs. HECKLER. No; I was familiar with Mr. Svahn. As a Member of Congress, I had heard earlier his testimony on social security issues. The discussions about whether or not I would accept this post, and about the availability of this Cabinet post, did include the suggestion that there was an Under Secretary nominee under consideration who had been well known by many at the White House and would be suggested and nominated at the same time that I would be.

I met Mr. Svahn prior to my making a decision on this Cabinet post; I feel he has a very fine reputation and I think the White House and the President, those who know him best, have strong confidence in him. And I expect to have a very good working relationship with him.

But I also intend to be the Secretary of this Department.

Senator PRYOR. Thank you. My time has expired.

The CHAIRMAN. I would just say, I guess when you're out of town you would have a telephone. [Laughter.]

Mrs. HECKLER. Yes; but I would not like to suggest there is any unease. I expect a good working relationship here and will strive for it.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Peggy, you and I have known each other a good many years, and you are indeed a fighter. And you indicated earlier, while you would be a loyal member of the administration, you had no hesitancy to fight within the administration for your views.

Let us presume that the present court decisions on the snitch regulations are upheld at the Supreme Court level, indicating that HHS cannot impose the regulations they attempted to impose unless the law were then changed by Congress. What would be your advice to the President as to whether or not the law should be changed at that stage?

Mrs. HECKLER. Well, it is a little hard to forecast future events, and certainly we do not know what the courts will decide. I would not prejudge court action. I think the Court in its process will examine all facets of this, and arguments can be raised in the Court process that will have great color and weight.

The fact of the matter is the President himself feels strongly about this issue, and I have discussed the issue with him. He has taken the position that the Department is supporting, and if he chooses to continue to pursue that course through a legislative approach suggesting a change in law, then my role would be to support that. The issue has been closed, really.

Senator PACKWOOD. What will your advice to him be at that stage, however, when he decides whether or not to come and seek a change in the law?

Mrs. HECKLER. The President knows my views on the subject and I understand his. And I have respect for those who take the other side of this issue. I understand their concerns, the concerns of families.

Senator PACKWOOD. At the moment the President has not taken a position on whether the law should be changed. His position is that the law allows HHS to do what they have done.

Mrs. HECKLER. Right.

Senator PACKWOOD. What I want to know, what your advice to him will be if the Court decisions that are presently pending are upheld.

Mrs. HECKLER. My advice will depend upon the circumstances as they exist at the time the issue arises.

Senator PACKWOOD. All right, let's go to another subject. And here I am interested in your personal opinions, because you are well aware from having seen different Cabinets operate that some people rise and some people fall within the Cabinet, and some Cabinet Secretaries are tremendously successful, some others not.

And a great deal of it relates to the diligence with which the Cabinet Secretary will pursue his or her views. You are a lawyer.

Mrs. HECKLER. Yes.

Senator PACKWOOD. What do you legally think about the attempt to reverse the Supreme Court decision on abortion by statute?

Mrs. HECKLER. I have always voted for the Hyde amendment. I am prolife. I sincerely believe in that position.

Senator PACKWOOD. That is not what I mean. Those are not reversals. What do you think of the effort to take away jurisdiction from the courts to decide the issues like abortion by statute?

Mrs. HECKLER. I feel that the issue—the Hyde amendment—has to be finalized into permanent law.

Senator PACKWOOD. That is not the Hyde amendment.

Mrs. HECKLER. I know that, but I am saying that should be the first course.

Senator PACKWOOD. I want to know what you think personally about the efforts to reverse the Supreme Court's decision on abortion by passing a statute that says, henceforth the Supreme Court may not hear cases involving abortion.

Mrs. HECKLER. I feel that obviously the issue is one of such great magnitude and seriousness that I would discuss it with the President and indeed debate and consider it with him. And I have to say, Senator, that regardless of whatever view I might hold, I would certainly carry forth his view and pursue the stand that he takes.

Senator PACKWOOD. Well, I would hope so. I would hate to think we are going to have a Cabinet full of Secretaries that are going to go off willy-nilly in their own direction. What I am curious about is your personal view.

Mrs. HECKLER. My personal view is not as significant as the President's view, Senator.

Senator PACKWOOD. Fortunately, that is true. What is your personal view?

Mrs. HECKLER. I simply have felt that we need to solidify the progress made, and I happen to consider it progress, in stopping Federal funding of abortion. And I feel and have felt for some time that going beyond that would not be timely because the issue has not been resolved with any finality.

And now in the House, with the new rules, banning the riders to appropriation bills for example, the use of Federal funds for abortion, which was the Hyde amendment, will no longer be in order. So the first step will have to be banning this.

But I am personally very, very opposed to abortion, and I feel ultimately that that is my strongest stand on the issue. I have not prejudged all future issues.

Senator PACKWOOD. Let me ask you this, Peggy. My time is up but I will come back to it. Do you intend to answer my question about your personal view, personal view as to whether we should try to overturn the Supreme Court decision by a statute which prohibits their taking jurisdiction, whether it be abortion or school prayer or any other particular decision that involves what they call a constitutional right?

Mrs. HECKLER. I would say, Senator, that my positions have been formulated very, very decisively on the issues that really have come before me as a Member of the Congress. I have not faced those issues finally and have never quite determined ultimately that the door was totally closed.

But given my strong feelings about the right to life, I cannot imagine myself coming down on the other side of the issue.

Senator PACKWOOD. What does that mean? [Laughter.]

Mrs. HECKLER. It means that when faced with a major question on the issue, my own strong convictions on the right to life will I think dominate my thinking. Now, that does not close the door to consideration of a specific statute or specific events or specific wording, and indeed the total composite of a legislative package or a constitutional proposal.

Senator PACKWOOD. Might I have one last question, Mr. Chairman?

The CHAIRMAN. Yes.

Senator PACKWOOD. Let me just ask your general philosophy on the attempt to prohibit the Supreme Court from having jurisdiction over any particular constitutional case by the act of passing a statute that says they may no longer hear cases involving that subject. Forget abortion, forget prayer. What is your judicial philosophy about that legal approach?

Mrs. HECKLER. I doubt very much that it would be effective. I do not think you can reverse a constitutional provision with a statute.

Senator PACKWOOD. No, I hope you cannot. I hope you are right.

Mrs. HECKLER. As a lawyer, that is my immediate response.

But let me just say, Senator, I am in great support of those steps taken by Government which will advance in my judgment the right values, and I think that the steps have to be legally correct. At the same time, I will say that as a lawyer I do not agree with the *Roe* v. *Wade* decision and I feel, in my judgment and my interpretation, that was a decision which created out of whole cloth a new theory. And I have not the greatest admiration for the decision.

So that I would review any issue that related to that subject with that attitude in mind.

Senator PACKWOOD. Well, I would like to quote to you there Robert Bork's testimony on this very issue. He thinks *Roe* v. *Wade* was awful. He was the Solicitor General. The President appointed him to the court of appeals. But I thought his reasoning on this subject was extraordinary, after he went through eight or nine pages and concluded that *Roe* v. *Wade* said, if there could be an unconstitutional decision that is unconstitutional.

But you cannot have unconstitutional decisions of the Court because the Constitution is what the Court says. And he then came down in opposition to trying to change it by statute, because he said you do not cure a deformation of the Constitution with a greater deformation of the Constitution, which would be a legislative reversal of a Supreme Court decision.

I would hope that would be your legal opinion.

Mrs. HECKLER. Well, we have, as I understand it, 300 lawyers to enlighten my legal thinking at the Department, and certainly a General Counsel of enormous stature. I feel that these are complex and serious issues. I have given a great deal of thought to these issues, and feel very strongly about what I have to say, Senator—and you and I have disagreed on this issue many times before—I think that the law must be observed and the Constitution must be honored.

At the same time, I also have deep respect for the right to life in this society and would hope not to err in the law or in public policy strategy in terms of dealing with that. But I do have that very,

very strong commitment to this concept, and I would expect to honor that in my role.

The CHAIRMAN. Thank you, Mr. Chairman.

Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

And Mrs. Heckler, I join the other members of the committee in welcoming you here today, and look forward to what I am confident will be your prompt approval and confirmation of your nomination.

Senator Packwood has raised a question of very, very great relevance and, I think, gravity today. I am not going to ask any more questions because he has asked you about it, but I would just make this point.

I am concerned that your earlier answer to one of his questions comes dangerously close to saying that the end may justify the means, when you said that because of your strong commitment to the right to life position you could not imagine coming down on the other side.

I respect that position. It is obviously a deeply held one. There are many people in this country who have very strong feelings like yours and in opposition to abortion. But the fact of the matter is that there is an effort underway to really dislodge the solid system which we have had for 200 years of three branches of government, and that it is not just abortion. As Senator Packwood has pointed out, efforts to deprive the Supreme Court of jurisdiction to achieve indirectly what cannot be achieved directly, either through legislation or through enactment of a constitutional amendment.

And this is a very dangerous thing, Mrs. Heckler. It goes beyond just the issue of abortion and strikes at the very roots of our system of government. And I would urge you to study this with some care and caution, and to reflect upon the views that Senator Packwood has expressed, again not on this particular issue of abortion, but on the abortion of whether or not Congress can by a simple majority deprive the Supreme Court of jurisdiction in an area in which the Congress is displeased by the Court's decision.

That in my judgment and my personal opinion is plainly unconstitutional. More than that, if carried forward in the manner which some are attempting to carry it forward, it will subvert the form of government which has served us so well for a couple of centuries.

It is a very serious matter and I would strongly urge you to review it, and particularly to review your response which indicated that because of your deep feelings on this one issue you cannot imagine coming down on the other side. No end justifies any means.

Mrs. HECKLER. I would not suggest that I would accept that philosophy, because I do not believe that the end justifies the means in any case. And I will say that I will ponder the issue very, very deeply, both as a lawyer and as a public servant, and I will not allow my private feelings to stand in the way of what I consider to be my proper judgment.

And I also intend to honor the law, even if this Congress passes laws with which I do not agree. I am only too familiar from sitting on your side of the aisle that indeed, the Congress has always been thwarted by the lack of adherence to its will or its purpose in pass-

ing a law. And now that I find myself on the other side, I intend to honor that purpose as much as possible.

But I also would say that I want there to be no mistake about where I stand in terms of a commitment on the issue.

Senator MITCHELL. There is no question about that and that was not the thrust of Senator Packwood's question. It was in the method being attempted to achieve a particular objective, abortion being but one example and others exist in legislation pending in the Congress today, so-called Court-stripping bills.

That is the issue. It is not one's feelings on the issue of abortion.

Mrs. HECKLER. I understand totally and I understand your points as well and certainly will ponder them.

Senator MITCHELL. Let me just mention two areas that are of particular concern to me. Secretary Schweiker testified recently in behalf of the prospective payment plan under medicare to which Senator Chafee alluded earlier. Under the legislation there is contemplated an exemption for sole providers in rural areas. Secretary Schweiker assured me that he would consult with me and others who represent similar areas before establishing such standards. I am in the process of gathering a great deal of information on that subject. And I would hope that you would be willing to do the same before establishing the standards.

Mrs. HECKLER. I certainly will. Secretary Schweiker mentioned that to me and I am very supportive.

Senator MITCHELL. And could I, Mr. Chairman, just raise one more minor point which will take just a few seconds. I recently communicated with the Food and Drug Administration regarding an application for premarket approval of a device used for persons who are suffering from very severe and advanced cases of cancer. It is a particular problem of a constituent of mine who is undergoing truly great agony now.

In my letter, I asked not that they make a hurried analysis because it is a serious matter, but that it be done as expeditiously as is consistent with their review. And I would like to give you a copy of that correspondence and ask if you could look into that and, see if something could be done about that as promptly as possible.

Mrs. HECKLER. I certainly will, and I have taken an interest in the problems of cancer patients, who under normal circumstances, are not denied unapproved drugs which would not be available. And I am looking somewhat sympathetically toward the support of relaxing that for the cases in which there are no other opportunities for life and the individual understands the risks and is willing to embrace them.

Senator MITCHELL. Right. This particular application is for a device that speeds the dispensation of drugs directly to the affected area. It is not for a drug in and of itself, but I will make the correspondence available to you or a member of your staff, and I would like to have you look into that.

Mrs. HECKLER. I certainly will.

Senator MITCHELL. I wish you good luck, Mrs. Heckler. You have a very difficult job. I am sure you will do a good one. Thank you.

The CHAIRMAN. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman. Mrs. Heckler, I want to join Senator Pryor and others who served with you in the

House in our previous incarnation and say to you how much we enjoyed serving with you then and wish you the very best of luck. Because, as Senator Mitchell said, you will have a very difficult time riding herd and controlling the reins over a very large and very difficult department.

And certainly, if Mrs. Burford at EPA is having some difficulty with that agency, that would indicate to me that anyone who is nominated to be Secretary of HHS is going to have probably more problems over an agency that is that much larger.

I, too, was struck, as I think Senator Packwood was and Senator Mitchell, with your response to Senator Packwood concerning attempts of Congress by statute to overturn Supreme Court decisions. In my view—and I am only one Senator—but in my view it is clear that Congress cannot, by statute, overturn Supreme Court decisions on Federal constitutional issues.

Congress could not, by statute, abolish the first amendment. That would certainly be ruled unconstitutional I think by the Supreme Court. But even more important, it would entirely obliterate the separation of powers as a basis for our form of government. And if Congress by statute can obliterate the first amendment, abolish the first amendment, the Congress, by statute, is abolishing the Constitution.

Mrs. HECKLER. Exactly.

Senator BAUCUS. And if that is the case, it seems to me we no longer have a constitutional form of government, but it is a rule by majority. It is rule only by the whims, the instant whims, of the majority, and no longer the form of government that we hold so dear to us.

So with that in mind, and you have indicated that you agree with what I have said thus far, how can you possibly say that you will think about and discuss with the administration the merits of statutes—bills that were introduced in Congress, attempts by statute to overturn Supreme Court decisions?

Mrs. HECKLER. Well, I think there is a great difference between abolishing the first amendment and having the issues that are raised in every court, every issue that is brought to the courts——

Senator BAUCUS. You think there is a difference; that is, that there are some Supreme Court decisions interpreting the Constitution that Congress can overturn by statute, and there are some other Supreme Court decisions interpreting the Constitution that Congress cannot overturn? What is the difference?

Mrs. HECKLER. What I am saying is that I see the sacredness of the declaration of rights, but my instinct at the moment is to say that, while I would agree with the general premise that a legislative enactment cannot repeal a constitutional provision that is added to the Constitution or has that force, I would have to look at the legal intricacies. And frankly, Senator, I have not reviewed these in terms of prospective issues before the Department and before the Congress relating to such basic questions as those you have raised. I would have to ponder this, review my constitutional history and indeed, look at these questions.

I have always been asked whether I supported this or that constitutional amendment, and that was a different proposition. I am not sure of the scope of the legislative proposals that might be forth-

coming, and whether or not they would be violative of the Constitution, and I would want to refresh my memory and be better informed.

Senator BAUCUS. I am sorry, my time is running quickly here. I raised the question because to restore, to increase American confidence in government, I think it is important for the American people to believe that their public officials are going to abide by the rule of law. And certainly, the Constitution is paramount.

So I would encourage you and the others in the administration to keep that more firmly in mind than I think has been the case in the past because it would help, I think, restore some needed confidence.

Turning to another matter, Senator Chafee mentioned the cost of medicare. He very correctly raised that issue. No one has disputed that the trust fund will, as you said, be depleted by, what, 1986 or 1987. In fact, by 1993, it will be about $200 billion out of balance, and a couple of years later, 1995, it will be about $400 billion out of balance.

The problem, many say, is even worse than the problems we presently face with social security. What do you intend to do about that? What advice do you have or what mechanism are you putting in place so that we can address that problem? And earlier on rather than later.

Mrs. HECKLER. Well, I would say, Senator, that indeed, the administration does have some proposals which will deal with the problem and, of course, the recommendations of the Bipartisan National Commission on Social Security Reform offer some hope for the short run. Our prospective payment proposal should, hopefully, provide a more effective cost-incentive program and will be a saving.

But I will say that there is also in place an Advisory Council on Social Security which is chaired by Dr. Otis Bowen and appointed by Secretary Schweiker. It is presently devoting its time to this and will respond to the Department. The report will be made available to the Congress immediately in July. We are going to look for long-term answers, and we feel that the prospective payment approach is the first step.

Senator BAUCUS. I appreciate that, and my time is up. But in my humble opinion, the prospective payment approach is not going to solve very much of the problem at all. And the problem is much, much more difficult than that.

Mrs. HECKLER. I would agree with you, Senator, that this is not the magical answer, but I think it is a necessary and important structural change that is a good beginning. But much more has to be done, and we have to look at this because it a very serious and colossal problem.

Senator BAUCUS. Thank you.

The CHAIRMAN. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. Mrs. Heckler, I would remind you that the line of question which Senator Packwood and Senator Mitchell and Senator Baucus were pursuing here is not a hypothetical line. We have these issues before us and had them in the last session and had them in the session before and undoubtedly will have them this session; namely, overruling consti-

tutional decisions by legislative fiat, which deeply disturbs many of us. So I do hope that you will be able to give that some attention and further thought.

Have you given any thought to developing some kind of a proposal to deal with the issue of health benefits for the unemployed? I know you are new on the job and it is a massive undertaking, but I would be interested in any thoughts you have on that.

Mrs. HECKLER. Senator, I am not in the job yet, but it is a massive undertaking and I have been attempting to learn as much as possible about the Department in the last month. And this has been a very, very time-consuming task and will be very absorbing for sometime to come.

I will say that I am genuinely sympathetic to the need to find an answer, but totally unprepared to suggest one today. I will look at it in depth.

Senator CHAFEE. Well, I thank you. I would urge you to do so and have your brain trust have that high on their agenda because it is a matter that deeply concerns me and I am sure it deeply concerns you as well.

Mrs. HECKLER. It does, indeed.

Senator CHAFEE. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Moynihan?

Senator MOYNIHAN. Mr. Chairman, lest I not be heard on the subject, may I just join my colleagues in their comments with respect to the issue of court-stripping. And I think I can put it into perspective for you. You were not part of this debate which went on all last autumn here in the Senate.

The proposition, which some of us felt to be deeply unconstitutional; others felt, at very least, subversive of the American constitutional arrangements, was before the Congress and before the Senate. And there was a majority in favor of that matter, which would truly alarm many of us. And we had to go through extended debate and four motions on cloture before it was finally taken down.

And those of us who felt this to be so unconstitutional were concerned that we never heard a word from the executive branch in a matter which seemed to us clear, a matter about which Judge Bork, a distinguished scholar, a professor of law at Yale before the President appointed him to the Court of Appeals here, had no question in his mind. And we can have differences of opinions on many things but in defending the Constitution we have to be together.

Now, I think when you get a chance to look at this, I have a sense your instincts will come out exactly where ours were, but I would ask you to comment on that now.

Mrs. HECKLER. Senator, as you know, we live in two worlds. Or I did as a Member of Congress. You have your Senate world in which you have your own agenda, a very absorbing and important one. In many cases, we in the House were absorbed in other issues with the different agenda. Obviously, there are always two sides to every argument, and these each have their right to an advocate before the Court.

I certainly will review your extensive debate on the subject and ponder it. As I sat here I wondered what position Secretary

Schweiker had taken on this, and now you have resolved that. No position, is that right?

Senator MOYNIHAN. No position.

Mrs. HECKLER. Well, I am thoroughly aware of the views of the members of this commmittee and respect those views and will take them into consideration and certainly will pursue this subject.

Senator MOYNIHAN. Thank you. That is all we could ask of you.

The CHAIRMAN. Senator Pryor?

Senator PRYOR. I have no further questions, thank you.

The CHAIRMAN. Senator Packwood?

Senator PACKWOOD. Peggy, let me give you a for instance, and again, I want your personal opinion. I am really trying to find out your personal opinion on this.

You have a kidnapping, a Lindberg type situation. A suspect is caught. He says a few things to the police officer on the way to the police station, the trial is held, the defendant does not take the stand, pleads self-incrimination, and refuses to take the stand. The police officers take the stand and indicate what the person had said on the way to the police station and he is convicted, sentenced to death.

It goes to the Supreme Court and they reverse it on the violation of self-incrimination because of the police officers. They should not have been allowed to testify. The country is up in arms about this person who they think ought to be hung or shot or however we execute people now. And a bill comes along to deny the Supreme Court the right to review cases involving self-incrimination. What would your position be?

Mrs. HECKLER. That is a very extensive situation that you have detailed, and I would like to say this, Senator. I am seeking to be confirmed by this body to head one of the most important and demanding departments in this Government. I am preparing myself to handle its issues and its problems.

At this moment, I feel very relieved that I am not seeking a position on the Court. [Laughter.]

I feel very strongly and I want to assure you that the law will be enforced, regardless of my personal views. The law, as it is expressed and enforced, will be honored by my department, and I can make that commitment to you.

As to pondering all of the hypothetical legal cases that could occur in any segment of this society, I frankly have been so immersed in human services and human development and social security and medicare that really, I would have to reflect on this more thoughtfully and at a quieter, more peaceful moment than this.

Senator PACKWOOD. Well, then, Peggy, let me say this in conclusion. That to me is a discouraging answer. This is not a new subject. That is not a new subject just this week or this month. We went through this in the midfifties with some bills introduced by Senator Jenner to take away from the Supreme Court the right to hear cases involving subversives; to just take it away. We went through it in the midsixties on reapportionment when the Court finally said after 150 years no longer can you have these gerrymander districts, and there were bills introduced in Congress to take away the Court's jurisdiction.

And now we have got it on abortion, and I regard it as the most dangerous ploy to undermine our form of government that we can have. And to say you have not thought about it when you have been in the Congress for 16 years and we have had these issues amazes me.

Mrs. HECKLER. Senator, I did not say that I had not thought about the bills on abortion. When you asked me about criminal rights and privileges and whether or not they will be——

Senator PACKWOOD. I am asking you about the issue that we have had now for 25 years of taking away the jurisdiction of the Court by statute because of a particular passing passion at the moment led by a fury of contemporary Cotton Mathers wants to reverse a decision they do not like by statute. That is not a new issue, and it is not going to go away.

Mrs. HECKLER. No; it is not a new issue and I think it deserves a great deal of attention. I think the issues that relate to the abortion question were some of the most devisive facing the Congress for all the years that I was there. And, indeed, I consistently, as I told you and as I think you well know, have voted in favor of the prolife position.

I do not preclude any future judgment on constitutional questions based on the language of a proposal and its implications. But to say that we can never change any position ever taken by a court and thus deny the right of a Congress to express the will of the American people, is a situation and a proposition that I am not about to embrace at this time.

Senator PACKWOOD. I was going to pursue the subject of a constitutional amendment which I regard as a legitimate way to try to change the Constitution and we are going to have a debate on that, and I will say to Senator Hatch's credit, he has restrained himself in the past on this issue. He has wanted to go the constitutional amendment route. I will oppose him on it. But it is a legitimate way to go, and the way our founders intended we should go.

I do not think in their wildest imagination they ever thought, when they set up the division of branches of government that the U.S. Congress ought to have the right to take away from the Supreme Court the ultimate decision as to whether or not an act was constitutional.

The CHAIRMAN. Senator Baucus?

Senator BAUCUS. Mrs. Heckler, not to belabor the point but as you think about this hearing today and, in particular, the issue raised by Senator Packwood and most of the rest of this panel today, let me tell you that when Robert Bork was before the Judiciary Committee in his confirmation hearing, he was asked this very question.

He did not hide behind the cloak of ambiguity, but instead stated forthrightly that he was very much opposed to any Court-stripping measure at all. He felt that so strongly he was willing to say that openly at his confirmation hearing, even though, as you have indicated and others have indicated, Robert Bork is very much opposed to the *Roe* v. *Wade* decision.

Mrs. HECKLER. I have great respect for Robert Bork. I also feel that there are valid arguments on the other side of the issue, and I really would not preclude my opportunity to look at those from the

perspective of a Cabinet member, a representative of the Department of Health and Human Services and a representative of the President.

I would consider it essential to look at the other sides of these arguments, but I happen to have very little respect for the *Roe* v. *Wade* decision. I have read it extensively. I cannot follow its legal reasoning. I would agree with Robert Bork on that subject, and to think that the Congress of the United States is foreclosed from considering any other option in addressing what I consider to be a very poor judicial ruling is a proposition that I am not about to embrace at this point.

Senator BAUCUS. Well, I think all of us are surprised we have gotten into this so deeply. Senator Packwood indicated earlier——

Mrs. HECKLER. I am very surprised. [Laughter.]

The CHAIRMAN. No one told you it would be easy. [Laughter.]

Senator BAUCUS. Senator Packwood mentioned there are ways that Congress can address this issue. Senator Hatch has a constitutional amendment, and that is the process that our Founding Fathers provided. But I think, too, that our Founding Fathers in no way envisioned that Congress, by a whimsical majority, by statute, could overturn Supreme Court decisions.

So I hope you think very, very deeply about that because I think it is probably one of the most important matters that is going to come out of this hearing today.

Mrs. HECKLER. Well, I think that the issue is a very important one, and I also feel that those who have fought on the other side of it in the Congress have valid reasons for the positions they have taken.

And I think when a Member of Congress, or when the Congress, sees positions taken by the Court that they think are very out of line with precedent or judicial reasoning, they should not necessarily be usurped from having any alternative approach. Obviously, the constitutional amendment is the usual approach, and that is a correct one. But to foreclose all other legal options—the drafting of a law, the impact of a statute—I think goes beyond a commitment that I would like to make today.

The CHAIRMAN. Thank you, Senator Baucus. Are there any other questions on HHS? [Laughter.]

Mrs. HECKLER. Are we back to HHS?

The CHAIRMAN. Yes. I do have some questions that we would like to have answered in writing; questions from Senator Packwood and Senator Heinz.

Mrs. HECKLER. Certainly.

The CHAIRMAN. And Senator Moynihan, and there may be others because a number of the members are in other hearings, as you know.

Mrs. HECKLER. Yes, I do understand.

[Questions for Mrs. Heckler from Senator Moynihan follow:]

Various prescription drugs, whose patients' have expired, are not now subject to competition because the Food and Drug Administration has yet to develop and forward a plan to permit competition. Because of the delay in implementing the Abreviated New Drug Application to post-1962 drugs, the monopoly life of products on which patents have expired has been effectively extended.

The Department of Health and Human Services has been developing a policy for the last five years. When can we expect regulations to be promulgated that will

allow generic equivalents to post-1962 drugs to be approved under the same process as pre-1962 drugs?

Answer. As you know, this complex issue has been under consideration by FDA for some time. I understand that a proposal in this area may be ready for consideration within the Department in a few weeks.

The CHAIRMAN. I just have a few questions, and again, they are questions that I have made available, so they should not be a surprise, because we are trying to make a record and we do appreciate very much the questions, and I think Senators Packwood and others have asked questions in a very difficult area. But we did take action last year to encourage the development of orphan drugs, and we provided incentives to drug companies and that is important. But it is equally important to have the FDA approve the drugs quickly so it can be put to use.

You have jurisdiction of FDA, and it is a very important agency, but one common complaint we have, and maybe there is no justification for it in every case, is that it takes so long for approval. And I would just urge you to take a look at that to see if there is some way we can expedite the process. We have had a number of reports indicating that it just takes forever, and I know there are safety factors involved and health factors involved and we must move very carefully. But it is an area that we have an interest in, too, and if you can check that for us, it would be appreciated.

Mrs. HECKLER. Senator, there has been a great deal of concern expressed. I was very involved with this issue earlier. I also think that we are searching for ways to expedite the process while protecting safety. And I would also say that I would not minimize the safety need here because it is a very complex one; I happen to have seen one of the most valuable members of our society actually suffer cardiac arrest because of a drug interaction. The question was the testing of the drug and its subsequent use, and that drug was ultimately banned.

So I feel strongly that we have to accelerate the procedures, but with due concern for the concern of one's health. And I would say that in the case of a cancer patient, as Senator Mitchell has mentioned, I think there is a justification for a further relaxation.

I know the frustrations of the drug researchers and of the public who read that drugs are available in Europe and elsewhere in the world and not in the United States. I think that for the sufferers of many diseases, this delay is very, very serious and very harmful. I think we have to balance the equities.

I will certainly pursue the advancement of the drug approval procedure and process, but I have to say, with due regard for the health and safety issue.

The CHAIRMAN. That is all we can ask and we appreciate that. The Congress, since 1976, directed the Secretary to prescribe regulations for prospectively setting rates for renal dialysis treatment under the ESRD program, and we mandated regulations in 1981. We were told early last year that such regulations would be effective in July 1982, 4 years after the 1978 legislation. We are going on 5 years now.

Now, when can we expect to see congressional intent carried out? When are we going to see those regulations? And I know there are

a lot of heavy hitters involved in this exercise, but can we have the regulations?

Mrs. HECKLER. Yes, I think they are going to be forthcoming, very, very shortly. And the issue of access, which is an issue in the minds of many Members of Congress, must be dealt with fairly. The regulations were published as a proposed rule last February, and the final rule has been drafted. It is now under discussion within the administration, as I understand its status. I believe that it is very close to a final decision.

The CHAIRMAN. And there are a number of people, myself included, interested in seeing more home dialysis. In many cases, that is not only an option; it is less expensive. And in many rural areas it is the only option; they do not have dialysis centers. And it is a concern of many members of this committee, and I would only ask that we might check to see what progress has been made.

Mrs. HECKLER. Home dialysis is looked upon very favorably by the Department. In my recent briefings I have heard very extensive praise for that alternative, and in fact, it seems extremely desirable from the patient's point of view, not only because of the isolation of individuals but really because of the flexibility it offers the patient. So this is an approach and a therapy that I think is very important.

The CHAIRMAN. We also need the regulations implementing the newly established peer review organizations. They have not been published, and again, I would just ask for your assurance that we have those regulations. I know it is a time-consuming effort, and I do not expect you to come before this hearing with every answer to every question, but it is a matter of concern. And it would be helpful to you later on if at least there is a record made that this is an area of some sensitivity here.

Mrs. HECKLER. There is great sensitivity on my part at the same time. The prospective payment proposal, it is felt at the Department, might well make the need for a formalized peer review organization unnecessary, although good peer review organizations could still be funded by medicare at the request of either the intermediaries or the hospitals. So that there is an opportunity for funding in an indirect way.

And there is a feeling at the Department that the prospective payment proposal itself might go so far as to really make the establishment of formalized organizations unnecessary.

The CHAIRMAN. How much is your budget? You have got a big, big budget.

Mrs. HECKLER. $275 billion.

The CHAIRMAN. That is a substantial amount.

Mrs. HECKLER. Yes, the third largest in the world. And second only to the United States Federal outlays and those of the U.S.S.R.

The CHAIRMAN. How much of that is entitlements and how much appropriations?

Mrs. HECKLER. It is 95 percent entitlement programs and 5 percent discretionary funds or appropriated funds.

The CHAIRMAN. So I think it is good to indicate that it is a very responsible position you are about to enter.

Mrs. HECKLER. Very much so.

The CHAIRMAN. And we appreciate your willingness to do that, and there may be some who feel that this Department has been shrinking, but it is well to point out that since fiscal 1981 the budget has increased $60.7 billion, and some of that has been in the entitlement area, but we have had rapid growth in this Department.

It has been slow the past couple of years, and I must say that this committee has not been timid. We are criticized by some on the far right from time to time for not doing more. We have made substantial reductions in the growth of medicare. In fact, in the bill last year over a 3-year period about $13 billion. We have also tried to be very careful in reducing some of the medicaid costs and some of the AFDC costs, and I think we have reached out about as far as we can go, particularly in AFDC.

But we are, of course, sensitive to the needs to reduce the deficit and to do a lot of the things that you are going to be asked to do.

I have a number of other questions that I will be happy to submit in writing.

Mrs. HECKLER. I would be happy to respond.

[Questions from Senators Dole, Packwood, Heinz, and Mitchell follow:]

QUESTIONS FOR SECRETARY MARGARET HECKLER FROM SENATOR DOLE

Question. What are your views on taking social security out of the unified budget?

Answer. I agree that changes in the Social Security system should be made only for programmatic reasons, and not for purposes of balancing the budget. Some believe that the situation could be adequately handled if the operations of the Social Security program were displayed within the unified Federal budget as a separate function apart from other income security programs. Others maintain that a policy of making changes only for programmatic reasons would be more likely to be carried out if the Social Security program were not included in the Federal budget. No matter what is decided, the Social Security program's operations could and should be reported in such a way that the program's financial condition and its economic impact are clearly visible to the public.

Question. Can you give us a sense of your priorities for change as they pertain to the health care financing programs, particularly Medicare and Medicaid?

Answer. The President's budget recently transmitted to the Congress legislation comprising the Health Incentives Reform Program. As you know, this legislation reforms financing policies to constrain skyrocketing health care costs while maintaining affordable high-quality health care.

In addition, this package addresses for the first time the underlying causes of excessive increases in health costs. It will be my priority to promote the President's budget in order to ensure that prompt action is taken on these pressing issues so that we can bring down health care costs fairly for all segments of society.

Question. There continue to be discussions on the appropriate role for the Federal government in the financing and administration of the Medicaid program. Do you have a particular position on this issue?

Answer. Medicaid is operated by the States under broad Federal guidelines and with Federal financial participation. The Omnibus Budget Reconciliation Act enabled the Department to give States more flexibility in operating the Medicaid program so that economy and efficiency may be more readily pursued. New waiver programs allow States to take advantage of new innovations in health care delivery and reimbursement to better meet local needs. We believe that States are best equipped to manage the program in the most effective way possible. The Department will continue to work with States so that they may take advantage of the new Medicaid flexibility provisions.

Question. Through a maximum allowable cost (MAC) program, Medicaid regulations limit what States can pay for drugs. We would be interested in having you review these regulations to determine whether they are equitable, and if not, whether they can be updated without increasing program costs.

18-037 O - 83 -6

Answer. I will assure that the MAC program is administered in an equitable manner. I understand there have been independent evaluations by the GAO and a private contractor (ABT Associates) which indicate that there is a high cost benefit ratio to the program. Of course, the Department will continue to monitor all of our reimbursement policies to make sure that they do not unfairly burden the health industry. I have asked the Department for a report on the MAC program.

Question. An advisory Council on Social Security, appointed to review the Medicare program, has been at work for several months. The Council is considering various options for reforming the program. Which elements of the Medicare program do you believe need reform? Given the impending financial crisis in the Medicare program, do you believe the need has arisen for a commission, similar to the one appointed to study the social security retirement program?

Answer. The major problem we face is the rapidly approaching bankruptcy of the hospital insurance trust fund. The incentives of our current financing system to spend, not to conserve, contribute substantially to the problem. It is to address this issue that we have forwarded to the Congress for its consideration our health incentives reform proposals to control inflation and encourage competition in the health care marketplace.

I believe it is premature to decide whether a commission similar to the one currently required by statue is needed. The charge of the present Advisory Council is to review the trust funds regarding long term commitments, scope of coverage and adequacy of benefits, and all other aspects of the Medicare program. This Advisory Council's work is now underway, and the creation of still another such body might be confusing and possibly unnecessary.

Question. We are currently moving toward adoption of prospective payment for inpatient hospital and, I understand, hospice services. Do you believe it is appropriate to move in the same direction with respect to physician services, home health care, and other services provided under the Medicare program?

Answer. At this point, I would say we are interested in developing additional data and studies which would give us information on which to make informed decisions. Do not forget that our hospital prospective payment system is built on a base of 10 years research and demonstrations dealing with different ways to reimburse hospitals. We lack the data necessary to extend the prospective payment system to other areas at this time.

QUESTIONS FOR SECRETARY-DESIGNATE HECKLER FROM SENATOR PACKWOOD

You might recall that as part of the 1981 Reconciliation Act, a provision was included to direct the Secretary of HHS to issue two composite rates for dialysis services. One rate was to apply to freestanding facilities, the other to hospital-based facilities. We had two purposes for the composite rates, to encourage more home dialysis and a more efficient ESRD system.

I understand that the Department started to do what we told them to. Last February—over a year ago—HHS proposed two composite rates. Senator Durenberger's Health Subcommittee had a hearing on the proposal. But since then, nothing has happened. So I have a few questions about this:

1. Do you agree with the Committee that the ESRD program can be run more efficiently?

Answer. Yes. That is one of the primary reasons behind the Department's proposal implementing the composite rate prospective reimbursement system. The Department's proposal would simplify billing for dialysis services, an advantage to beneficiaries, facilities and the Federal government.

The present system allows many different ways to reimburse dialysis services, equipment and supplies, particularly those furnished to home dialysis patients. The proposal would require facilities to act as a focal point for all services, equipment and supplies, and only facilities would be paid for these items and services through the per treatment prospective rate. By paying the same rate for bot in-facility dialysis and home dialysis (which is less expensive) we would promote the use of less-costly home dialysis where it is appropriate.

2. Do you think, as we do, that encouraging home dialysis by appropriate patients can achieve economies in the program?

Answer. Yes. Our cost data show that the average cost of home dialysis is $97 per treatment vs. the average cost of in-facility dialysis of $108 per treatment in independent facilities and $135 per treatment in hospital-based facilities.

Currently, 17 percent of the program's beneficiaries are home dialysis patients. When medically appropriate, we believe this percentage could be increased significantly because of the wide variations by State. For example, in the State of Illinois

it is only 6.2 percent, while in the adjacent State of Indiana it is 43.9 percent. The highest percentage is 54.2 percent in Washington State. Furthermore, according to the National Dialysis Register, in January 1973 (which was 6 months before the Federal ESRD program began) 37 percent of the patients on dialysis treated themselves.

3. Savings of $100 million were projected by the Department for these regulatory changes. Does HHS still have a goal of achieving substantial savings in the ESRD program?

Answer. The Department's proposal was prepared with two primary goals in mind which reflect the two primary statutory goals of the 1981 legislation: (1) promote efficiency in the delivery of ESRD care and (2) ensure continued quality of care. On an annualized basis, the savings projected for the proposal are approximately the same as those published in the proposed regulation. The difference in current projected savings for FY 1983 is primarily due to a later implementation date than was originally assumed.

QUESTIONS FOR SECRETARY-DESIGNATE MARGARET HECKLER FROM SECRETARY HEINZ

1. One of Secretary Schweiker's priorities before leaving office was the publication on the final End-Stage Renal Disease prospective payment regulations mandated by the Omnibus Budget Reconciliation Act of 1981. The Health Subcommittee of this Committee held oversight hearings on March 12, 1982 and was told that the regulations could be effective July 1, 1982. The prospective Medicare budget savings is $100 million per year. To date, the final regulations still have not been published. Do you intend to sign the regulations as currently drafted? Can you give me a date today when you would expect to publish them as Final in the Federal Register?

Answer. As you know, since my appearance before your Committee, I have been confirmed as Secretary. Subsequently, I signed the proposed ESRD regulations on March 23, 1983.

2. You wrote Secretary Schweiker on July 21, 1982 opposing the basic concept of the End-Stage Renal Disease regulations mandated by the Omnibus Budget Reconciliation Act of 1981. Does that letter still reflect you views?

Answer. In my letter of July 21 to then-Secretary Schweiker, I did not oppose the basic concept of the ESRD regulation. I expressed concern that the rates be reasonable so the ESRD patients would continue to get the necessary treatment. I was advised by former Secretary Schweiker that the proposed regulations would maintain quality of care and accessibility of services for these patients.

3. On January 26, 1983, on a Wall Street investment banking house favorably recommended the stock of National Medical Care, Inc., the major provider of outpatient centers, because you favored keeping the dialysis rates for outpatient centers at the current $138 per procedure level. Have you made any statements recently which on or off the record might encourage that view? If not, why would the Wall Street analysist reach such a conclusion?

Answer. As previously stated, it is my view that reasonable rates should be established. As I review the proposed rates in the regulations, I will make a determination as to the reasonableness of the rates. Lastly, I am not in a position to second-guess how Wall Street reached its recommendation.

4. I understand that National Medical Care, Inc. has been lobbying White House officials to block the final regulations. Since National Medical Care is based in Massachusetts, do you know any of the officers of the company?

Answer. To the best of my memory, I never met with officials of National Medical Care.

5. Have you spoken to the President, Mike Deaver, Craig Fuller, Fred Fielding or received guidance from them or anyone else at the White House about these final regulations? If so, what kind of guidance did you receive?

Answer. To date, I have not spoken with anyone at the White House regarding these regulations.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
OFFICE OF THE SECRETARY,
Washington, D.C., April 27, 1983.

Hon. GEORGE J. MITCHELL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MITCHELL: I am pleased to provide you with the Secretary's response to questions concerning the Department's parental notification regulation

pursuant to the title X family planning program. As you know, these questions were asked by one of your constituents, and you have requested that they be made a part of the record of the Secretary's confirmation hearing before the Committee on Finance.

Sincerely,

THOMAS R. DONNELLY, Jr.,
Assistant Secretary for Legislation.

Question. A constituent has requested that answers to the following questions be placed on the record.

(1) Do you now oppose or support the Administration's parental notification regulation?

(2) Will you terminate funding of Title X recipients (Planned Parenthood) that do not abide by the parental notification regulations?

(3) Do you think that Title X recipients (Planned Parenthood) should continue to receive tax money while they are suing HHS?

(4) Do you think women have a right to know that birth control pills (in part) and IUD's (exclusively) cause early abortions?

Answer. All four of the questions posed relate to the parental notification regulation published by HHS on January 26, 1983. Because HHS' authority to implement this rule is currently the subject of litigation, I am not at liberty to discuss any aspects of the case in detail. Permanent injunctions with nation-wide effect have been issued by Judges in New York and Washington, D.C. preventing HHS from enforcing the parental notification regulation which was to become effective on February 25th. HHS will be appealing these decisions as soon as possible. A hearing in the U.S. Court of Appeals for the District of Columbia will likely take place in May. As Secretary of Health and Human Services, I would support the Department's position that the rule is legally sound, that it is authorized by law, and consistent with the intent of Congress.

The CHAIRMAN. We would hope, without getting you involved in the so-called peer review program that the administration has indicated their desire to repeal that effort. That does not have much support in the committee. And I would just ask you to be aware of that.

Mrs. HECKLER. Yes, sir, I am aware of it.

Senator BAUCUS. Mr. Chairman, on that one point, might I ask a question?

The CHAIRMAN. Yes.

Senator BAUCUS. I would like to echo the chairman's statement on that point. Some people think that with respect to prospective reimbursement there is less need for peer review. I think you in effect said that yourself. On the other hand, I hope you keep in mind the problems that hospitals are going to face when physicians and/or hospitals want to admit low-cost patients in order to take advantage of DRG's. There is also dumping of patients to higher cost hospitals and unwarranted admissions and so forth.

And there are a lot of areas where I think it is very, very important to have peer review. In fact, some could argue, it is even more important to have peer review now than has been the case in the past. So I hope you keep that in mind.

The CHAIRMAN. And the record should indicate that Senator Baucus and Senator Durenburger have a particular interest in this area and have had. I think you have had hearings, have you not?

Senator BAUCUS. That is right. Senator Durenberger does have a very strong interest, I think, in maintaining peer review.

The CHAIRMAN. We have also had a number of complaints about the disability insurance program. And I think Senator Pryor has a special interest in this, as do other Senators on this committee.

We tried to make adjustments in the bill we agreed to in the lameduck session which passed the Congress. With Jack Svahn's help and others in the Department, Senator Levin, Senator Riegle, Senator Metzenbaum, myself, Senator Armstrong, Senator Heinz, Senator Cohen, Senator Pryor and others, Senator Moynihan, we were all working to try to correct some of these things. And we had Senator Long with us also on that area.

And I would just say again, I know it is going to be a sensitive issue. Some say we ought to have more legislation, but I would hope we could deal with some of the problems that arise on an administrative basis. You can move much more quickly administratively than you can getting a law passed around here.

So if in fact there is still, as Senator Long pointed out yesterday, if in fact someone is being terminated who is on a stretcher or a wheelchair and obviously should not be removed from the rolls, I would hope now with a face-to-face interview, that we could avoid those kinds of decisions that frankly do not say much for the administration of the program.

Mrs. HECKLER. Well, Senator, I personally know very well about some of the disability horror stories and had constituents who are its victims and on whose behalf I interceded. But I will say that the Social Security Administration has put into place, as you know, process changes which will, I think, remove some of the more serious and more obvious mistakes that have been made in the actual implementation of the program.

The face-to-face interview gives one the opportunity to see immediately that the other person is totally disabled or seriously disabled. And having an individual under those circumstances put through a long process is totally unfair. That, I think, will be no longer a problem, considering the reforms in the process that have already been put into place.

But I think really that the Department will be following the congressional mandate to review the disability roles because of the scope of weaknesses and waste. $2 to $4 billion, according to GAO, has been inappropriately paid to recipients who were not satisfying the standards of the law. I think you balance that against a process that will be humane and appropriate and quickly administered.

I certainly will take a special interest in the program. I believe that great improvements have been made. And hopefully, we will not only build upon that record but also really resolve some of the basic problems by having a single standard of disability rather than the two standards which have been part of the review problem so far.

The CHAIRMAN. All right. It is an effort that I think needed to be done, and Senator Long took the lead on this in 1980. And maybe based upon concerns that have been expressed, maybe that review was too thorough or too fast or whatever. But there has to be some balancing of the equities because there are obviously, as the GAO has determined and others have determined, a number of people who should not be receiving disability benefits.

Mrs. HECKLER. Indeed.

The CHAIRMAN. Well, finally, you have mentioned prospective payment that maybe should not be limited to hospitals. I would hope—and maybe hospice care, perhaps we ought to take a look at

that, physician services and home health care and other services provided under the medicare program, we are going to have to get a handle on medicare.

If we think we have got a problem with social security, as you know, we have got a big, big problem with medicare. Some have suggested maybe a national commission that would follow on the Advisory Council now in place.

But if we are going to preserve that program, you have got a big challenge in the next 6 months to 12 months. I do not think we can say 2 years or longer, because we must have something in motion in the next 12 months to start reducing the growth of that program or to increase taxes or whatever. It is going to be a difficult job.

Anything else you would like to say before you are excused?

Mrs. HECKLER. Simply that I have appreciated the opportunity of being here and have benefited from the comments made and the exchanges. I want to assure Senator Pryor that I will be running the Department of Health and Human Services. And I want to say as well that the issues are not capable of fast answers or quick fixes, but I am going to seek to look for long-range responses and look at long-range options.

And I will look forward, hopefully, if confirmed, to your advice and consent in the future. Thank you.

The CHAIRMAN. Could I just say one other thing before you leave, that I have reviewed the disclosure forms and the material that Mrs. Heckler has provided and filed with the Government Ethics Office. There are no problems in that area. That will all be made a part of the record and is available to members if they would like to look at it.

We are going to move very quickly on the nomination. As I understand, you have a hearing next week before another committee.

Mrs. HECKLER. Yes. Labor and Human Resources.

The CHAIRMAN. What date will that be?

Mrs. HECKLER. That will be on Wednesday afternoon.

The CHAIRMAN. Well, we will meet Wednesday morning then to report your nomination. I would assume that it would be swift. And we will try to get you ahead of the Adelman nomination on the floor.

[Laughter.]

The CHAIRMAN. Thank you very much.

Mrs. HECKLER. Thank you. Thank you all.

The CHAIRMAN. Our next nominee, we will now turn to the nomination of Jack Svahn to be Under Secretary of HHS. And let me say that I understand you have your wife present and your children, John and Kirsten. And we are happy to have your wife Jill and your two children. And you have got them right in the front row. That is sometimes not a good place to be around here, but we will see what happens. [Laughter.]

But we are delighted to have you here, and having worked with you over the past several months and years, Jack, I am very pleased that you have been nominated for this very important position. I have great confidence that you will be easily confirmed and that you will do an outstanding job. As I said in reference to the other nomination, that we have reviewed the disclosure forms that

you have provided and filed with the Office of Government Ethics. And I am satisifed there are no problems in this area.

I have also been informed that the Director of the Office of Government Ethics has sent a letter approving your nomination as well as the nomination of Mrs. Heckler. And you have complied with the Ethics in Government Act. And those letters will be made a part of the record.

I think first of all, any statement you would like to make we would be happy to hear from you at this time.

[The biographical sketch of Mr. Svahn and a letter from the Office of Government Ethics follow:]

JOHN A. SVAHN, COMMISSIONER OF SOCIAL SECURITY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

John A. (Jack) Svahn was sworn in as the ninth commissioner of Social Security June 29, 1981. He was nominated by President Reagan March 3, 1981, and confirmed by the Senate May 4, 1981.

As commissioner, he is chief administrator of the nation's Social Security, Disability Insurance, Supplemental Security Income and Aid to Families with Dependent Children programs which provide income support to more than 51 million people.

Before taking over the mammoth Social Security Administration, Svahn was a private consultant specializing in public policy management problems. From 1976 to 1979 he was manager of government services for Deloitte Haskins & Sells, serving as a specialist in health, welfare and social services programs.

Svahn was born in New London, Conn., May 13, 1943. He received his B.A. degree in political science from the University of Washington in 1966.

In 1966–1968 he served in the U.S. Air Force.

Beginning in 1968 Svahn held positions with the state of California and the federal government. In California, he served as chief deputy director and then as director of social welfare. During the Ronald Reagan administration in California, he was a principal architect of the state's welfare reform program.

During 1973–1974, Svahn was acting commissioner of the Community Services Administration. He also was commissioner of the Assistance Payments Administration in 1973–1975. Svahn served concurrently in 1975–1976 as administrator of the Social and Rehabilitation Service and as director of the U.S. Office of Child Support Enforcement. While heading the Social and Rehabilitation Service, Svahn was credited with developing and implementing the Title XX social services program and the Child Support Enforcement program.

Svahn is married, has two children and lives in Severna Park, Md.

United States of America
Office of Government Ethics

Office of Personnel Management
Washington, D.C. 20415

FEB 22 1983

Honorable Robert Dole
Chairman, Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by **John A. Svahn,** who has been nominated by President Reagan for the position of Under Secretary of the Department of Health and Human Services.

We have reviewed the report and have also obtained advice from the Department of Health and Human Services concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Svahn is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David R. Scott

David R. Scott
Acting Director

Enclosure

STATEMENT OF JOHN A. SVAHN OF MARYLAND TO BE UNDER SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. SVAHN. Thank you, Mr. Chairman and members of the committee. I am extremely pleased to be here today, and I am honored by the nomination by the President to be Under Secretary of the Department of Health and Human Services.

I would pledge my continued support to the President and my support to Margaret Heckler in her new role as Secretary of Health and Human Services should both of us become confirmed by the Senate.

I have enjoyed working with this committee over the past 2 years, and particularly in working with you, Mr. Chairman, on some very, very important issues that we have addressed in my 2 years as Commissioner of Social Security. The most important, I think, is the issue of social security financing.

We are close to resolution on that issue. I am extremely pleased with that prospect and I think that it is in particular due to the hard work of the members of the National Commission on Social Security Reform, of which you were a member, Mr. Chairman, as were three other members of this committee.

Assuming that I am confirmed, I would be leaving the Social Security Administration with some reluctance because I feel that the job there is not complete. We have tasks in the areas of financing, systems, and the disability insurance program which have not been completed, but I will continue, if confirmed, to move ahead with the priorities and programs which we have jointly developed over the past 2 years.

Many have helped me over the past 2 years, Mr. Chairman, not the least of whom are the President and my wife and family. I cannot thank all of them, but I would like to thank Mr. Paul Simmons, who has been my Deputy Commissioner and long-time associate, and Mr. Nelson Sabatini, who has been my Associate Commissioner and long-time associate. Also, I would like to thank the 86,000 men and women who make up the Social Security Administration and have worked diligently every day in providing services and benefits to 51 million Americans.

I do not have anything else to add, Mr. Chairman. I would be glad to answer any questions that you or any member of the committee might have.

The CHAIRMAN. I think, first of all, you have just indicated that you have completed about 2 years as the overseer of a bureaucracy of some 85 or 86,000 people spending about, what, $200 billion or more each year? Has that been a learning experience?

Mr. SVAHN. It certainly has, Mr. Chairman. Every day in the past 2 years has been a learning experience, and I anticipate that that will continue. I have had experience in the past in running what might be called large bureaucracies, but I think that the challenge that I faced in managing the Social Security Administration was a very great one.

I think that if I were to look at and to characterize what I have learned in the past 2 years, it is that in working with large organizations, you have to work with people. You cannot get the job done

by yourself or by directive, you have to lead people and work with the organization and the people who are there.

The other thing I think that I have learned, increased my knowledge of, is the importance of compromise. And I think that in managing major Government programs the size of programs such as social security or medicare, compromise is a very important part. We have to move slowly because the programs are so large and they affect so many Americans.

I think that the best example that we have of this over the past 2 years has been the compromise that has been reached by the National Commission on Social Security Reform.

I know, Mr. Chairman, and you know, having sat through all those sessions, that many members of the Commission and many of us who were observing it wondered whether we could come up with a compromise that would have broad bipartisan support.

In the end, due I think in great part to Dr. Greenspan's leadership, that such a compromise was achieved. And we now have a compromise that is moving through the Congress in both Houses. This committee has had hearings on the compromise, and I am confident that because of this ability to compromise, we will have a solution to the financing problem of social security.

The CHAIRMAN. Yesterday the Public Assistance Subcommittee of the Ways and Means Committee approved a proposal to delay the SSI cost-of-living adjustment until January 1984 and to increase the basic benefit by $20 per month. As you know, the National Commission on Social Security Reform had recommended increase in the earnings disregard to compensate SSI beneficiaries for the COLA delay.

Have you had an opportunity to check what the budget implications the action taken yesterday might be?

Mr. SVAHN. We are looking at that right now, Mr. Chairman, and our preliminary indications are that it would cost us something around $500 million more than the Commission's recommendation over the same period of time.

As I stated in my testimony before this committee, I believe it was last week, we are strong supporters of holding that package together as it exists, and I really think that once we begin to pick away at little pieces that people do not particularly care for themselves, we will unravel the entire package.

So I recognize that it has yet to come to markup before the committee, but I am hopeful that we will be able to go back and to restore the package as it existed when it was agreed to by the Commission.

The CHAIRMAN. Well, I assume there would also be some implications for the States there. I mean it is going to be an added——

Mr. SVAHN. Yes, there would.

The CHAIRMAN. So maybe the States are struggling with about all they can carry. Obviously we would want to address that. But that is a change. We always knew there would be some changes in the so-called package.

Have you had an opportunity to think about the issue of allowing investigators within various Inspectors' General offices to carry weapons? That has been raised recently. Have you had any knowledge of a need for weapons based upon the experience you have

had in conducting investigations against social security fraud? Do you have any opinion on that, whether that authority is needed within the Department?

Mr. SVAHN. Well, I have not personally had the opportunity to review that issue, Mr. Chairman. I understand that it is an issue. In my experience, at some point on a continuum of investigation you reach the point where it is time that the investigators or the law enforcement officials would be advised to carry a weapon. Now, I do not know where that point is, and I do not know whether the Inspector General's investigators are in that category.

I think that I will look into that if it is an issue in the Department, and that is about the extent of my comment.

The CHAIRMAN. I would appreciate your looking into that. It is a matter of some concern, and it may be necessary, but we would like to have some indication.

Senator Pryor.

Senator PRYOR. Yes. Mr. Svahn, I would like to first start asking a few questions relative to the Social Security Administration. And I know that you have been nominated for another position. But let me ask just for the record, because I do not think we have established this for the record, have you or your office—and I am not implying that you have—been subject to an Inspector General audit or any form of investigation?

Mr. SVAHN. On different occasions I would probably have to answer that question yes.

Senator PRYOR. What type of investigation would that be?

Mr. SVAHN. The Inspector General's Office maintains an anonymous hotline, and they are consistently receiving calls that say things like the Commissioner is using a Government car to commute to and from his home, which I do not do, and that kind of thing. So being as truthful as I can in answering your question, every once in a while we get those kinds of investigations, but nothing of substance, to my knowledge.

Senator PRYOR. Have you or your staff been the subject of a review or any other special attention by the Office of Government Ethics that you are aware of?

Mr. SVAHN. Not to my knowledge, no.

Senator PRYOR. Have you or your staff or your office been the subject of an investigation by the Justice Department or any other law enforcement agency?

Mr. SVAHN. Not to my knowledge.

Senator PRYOR. Have you or your staff or your office been the subject of an audit or report by the General Accounting Office or any other audit agency that determined any improper action had taken place?

Mr. SVAHN. Not to my knowledge, no, Senator.

Senator PRYOR. Fine. I am just asking these for the record. What do you believe your relationship with the White House staff members should be as it relates to policy matters?

Mr. SVAHN. Well, obviously the policy is set by the President. And from that standpoint, I think this President has done an exceptional job in laying out broad policy and setting policy and communicating it through the Cabinet councils to Cabinet members

and then, of course, on down through the Department via the various managers and supervisors.

The staff at the White House supports the President, as do I. And so from that standpoint, I would say that we are all part of a team and all working together and all trying to do a job.

Senator PRYOR. Is it true that during the years 1971 through 1973 you were the welfare director in the State of California when President Reagan was then Governor Reagan?

Mr. SVAHN. Well, I held a number of positions in the welfare department from 1968 to 1973, if memory serves me correctly. I started as an assistant director and moved to deputy director and moved to chief deputy director and finally finished as welfare director. Yes.

Senator PRYOR. At any time since you have been with the Social Security Administration, have you invoked executive privilege on any materials or excluded any documents or letters, et cetera——

Mr. SVAHN. No.

Senator PRYOR [continuing]. From being looked at by the Congress? That is getting to be a big issue around town, as you might have been reading about lately.

During the last Congress you testified about low morale at the Social Security Administration. And you said, and I quote—I believe this was in September of 1981, I am not certain. It was issued in a September 1982 report. You said,

> Social Security, I have said many times over, is not the same organization I first met 10 years ago when I was with the State of California. That organization had an esprit, a feeling, and an ability that they could do the job, they could do it well and do it efficiently.

And your final sentence,

> The people in Social Security right now do not necessarily feel that way. There is a very serious morale problem throughout the agency.

Do you recall making that statement?

Mr. SVAHN. I have made statements similar to that on several occasions. That sounds like a statement I made.

Senator PRYOR. Has that morale factor changed since you have been the No. 1 person in the Social Security Administration?

Mr. SVAHN. Well, I think two things have changed, Senator. One is my original assessment has changed somewhat, and I think that morale has changed somewhat. And that is one of the reasons I said in my opening comments that I am sorry I am leaving right now because I do not think that we are where we ought to be and where I really wanted to go in my tenure as Commissioner.

I think that in the social security field offices the morale has been fairly good and has improved substantially in the past 2 years. In the headquarters, I found, after having been there for a while, that there was a significant difference between the morale of the field offices and the morale in headquarters. The morale in headquarters, without trying to reach around and pat myself on the back, I think has improved somewhat. It is not good. There are some tough jobs to do there, and they are thankless jobs.

But I think it has improved somewhat. It is not by any stretch of the imagination a strong organization with a high esprit, though.

Senator PRYOR. Could you answer this question yes or no? Has John Svahn's policy or policies been implemented in the Social Security Administration?

Mr. SVAHN. Yes.

Senator PRYOR. The social security computers have been somewhat controversial in the past, so let me ask this question—and once again I am not implying anything—I am just trying to look at some possible rumors that have come our way. Does the firm of Deloitte, Haskins & Sells, do they have any contract at this time with SSA?

Mr. SVAHN. I do not know whether they have a contract with the Social Security Administration. They are a subcontractor to Electronic Data Systems in a systems development contract that we have.

Senator PRYOR. Is this firm a firm with which you were formerly associated?

Mr. SVAHN. I was from 1976 through—well, about midway through 1979.

Senator PRYOR. And you are not in any way associated with the firm at this time?

Mr. SVAHN. I am not in any way associated with them and have not been.

Senator PRYOR. Was a contract given to this particular firm in the neighborhood of $15 million?

Mr. SVAHN. I have no idea.

Senator PRYOR. Do you know whether or not this contract was one which was competitively bid?

Mr. SVAHN. Yes. The contract which was won by Electronic Data Systems was competitively bid.

Senator PRYOR. Did you have anything to do with the awarding of the particular contract in question?

Mr. SVAHN. Absolutely nothing.

Senator PRYOR. Are you aware that—or, one, do you know if the Hitachi Corp. has recently received a major contract with SSA?

Mr. SVAHN. They have not.

Senator PRYOR. They have not?

Mr. SVAHN. That is correct. If you would like, I will expand on that.

Senator PRYOR. That is not necessary. I just know that the FBI, I think, withdrew from their contract with that particular firm upon the revelation that there had been some allegation of stealing of secrets, et cetera, and information that was privileged.

Mr. Chairman, I apologize for taking all of this time. Have you had lunch?

The CHAIRMAN. I think we will stay.

Senator PRYOR. Well, I cannot stay too long because I have a plane to catch pretty soon. But maybe if I could have a few more minutes.

The CHAIRMAN. Go ahead.

Senator PRYOR. What is your understanding, and I go back to the question I asked a moment ago, has your policy—has John Svahn's policy been implemented at social security? I want to talk about that policy for a moment, especially as it relates to the social secu-

rity disability process. And we have discussed this by phone, and I did receive your letter pursuant to that telephone conversation.

I would like to ask, first, do you think that the administrative law judges across the country, do you feel that there has been any pressure whatsoever placed upon these individuals to make a determination or determinations that certain individuals should not receive social security disability?

Mr. SVAHN. No, I do not.

Senator PRYOR. Then would you describe for this committee what is called the peer review process when ALJ's are called in and receive instruction, "from their peers," or educational meetings, as it might be as to how they are handling decisions?

Mr. SVAHN. Well, first we determine—and this is a part of the implementation of the Bellmon amendment to the disability amendments of 1980—we determine whether there is a high incidence of error in an administrative law judge's decisions. In other words, we determine whether they are making errors in their decisions.

Part of the so-called feedback process is to counsel—I believe that is the term used—counsel the individual ALJ as to the law and regulations, and perhaps send them through a retraining or new training and to try to determine where we have a problem and why they are deciding cases in error.

Senator PRYOR. You are aware that from May 1981 to December 1982 that 300,000 individuals were terminated from receiving social security disability?

Mr. SVAHN. Well, the number sounds like it is approximately correct.

Senator PRYOR. I think that is an approximate number.

I would like to state, Mr. Chairman, that in no way am I defending people drawing social security disability who should not draw it. I certainly do not take that position. But I do feel that within the process of following out the mandate of the Congress—which I accept as a fact of life—there was a mandate for review; there should have been a review—that in the review process we made many, many mistakes along the line.

And along that same line I think that we really engaged in some tactics that I call almost subhuman.

Are you aware that on November 19, 1982, just a few months ago, the Special Committee on Aging and the Committee on Governmental Affairs held a joint hearing, chaired by me, I might add, in Fort Smith, Ark., to explain to the people this entire process and to hear testimony from individuals engaged in this process? Were you aware of that hearing?

Mr. SVAHN. Yes, I am, Senator. I believe, as a matter of fact, that we did submit a statement for the record at that hearing.

Senator PRYOR. Were you aware also that we requested that someone from the Social Security Administration might be present for the hearing, maybe out of the Dallas office or out of the Washington or Baltimore offices, to instruct or educate the people on what the Social Security Administration—how they were dealing with these matters?

Mr. SVAHN. I am aware of that, Senator. I am not sure because I get many, many, many requests for field hearings; but I would not be surprised if we did not talk about that at one time back then.

Senator PRYOR. We requested the presence of someone from SSA; and our request was turned down, saying that you had inadequate travel funds to send someone to the hearing, and so we accepted that on face value.

So, Mr. Svahn, the second thing was we asked three administrative law judges from Fort Smith, Ark., to appear at the hearing and to express their role and to tell the people and public how they made their decisions and what they were up against.

Were you aware that the Social Security Administration would not allow these three ALJ's to testify at a Senate hearing without taking annual leave?

Mr. SVAHN. To answer your question, Senator, I am not sure whether I was aware of it at that time, but I am aware of it at this time. And I have to say that it is the policy of the Social Security Administration, because of the tremendous number of field hearings being held by both bodies, by the Senate and by the House, last year on the issue of social security, to not testify at field hearings.

There are a limited number of people in the Social Security Administration whose job it is to testify before Congress. And I might add that I do not know of any ALJ's who regularly testify before Congress, just as I would not make a decision on a case before an ALJ. And from that standpoint and for that reason it is our general policy not to testify at field hearings.

Senator PRYOR. Well, you did not allow them to testify, but they did testify. They took annual leave, and they did appear, and I have their testimony.

Mr. SVAHN. They are perfectly free, as is any individual, I guess, who works for the U.S. Government to participate on their own time.

Senator PRYOR. Were you aware, Mr. Svahn, that just a few weeks after their testimony that they were summoned to Dallas for peer review and for instruction, and to be educated, I guess, on the facts of life about the way they were handling cases?

Mr. SVAHN. No, I was not.

Senator PRYOR. Well, after some phone calls that our office made and others made, and also because of a Federal lawsuit that was going on about that time, the request for them to come to Dallas for that review process was in fact withdrawn, so they did not have to go. But they were, as I say, harassed after that particular hearing at which they told what was happening in the process of social security disability review.

Mr. Svahn, are you aware that on February the 9th just this year, 1983, this month, the Office of Personnel Management announced that it was initiating a 1-year "classification" study of administrative law judges and instituting a moratorium on upgrading administrative law judge positions or filling any vacancies in higher grade levels?

Were you aware of that process?

Mr. SVAHN. No, I was not.

Senator PRYOR. Do you think that this process might in any way intimidate or be a form of harassment to any of those judges who in their own opinion are allowing disability to continue to some individuals?

Mr. SVAHN. No, I do not think so, Senator. I am not aware of any moratorium on upgrading administrative law judges. Ours in the main are GS-15 level civil service employees. There has been some talk about trying to get some of them upgraded to the GS-16 level. There are other departments who have GS-16 level administrative law judges. I would say that the Office of Personnel Management is engaging in a number of classification studies, and we have had several problems in different areas with different classifications of employees, most notably in the area of data processing, because of these general Government-wide studies that are being done by OPM.

But I do not think that there is any harassment coming out of that for the ALJ's in particular.

Senator PRYOR. If you were an administrative law judge and you were under a 100-percent review situation, might you not reasonably infer that frequent case decisions against an agency might affect the classification and possibly his pay or his pension or his career opportunity?

Mr. SVAHN. Well, if I were an ALJ and I were under a 100-percent review, I would have gotten there because I had a high error rate in my case decisions as decided by other ALJ's. And if I stayed at 100-percent for a very long time, I might be concerned. I might be concerned about my job, as I think any employee of the Government should be concerned when they have a high error rate.

Senator PRYOR. Do you equate a "high error rate," as you said, with allowing certain individuals to retain their disability benefits?

Mr. SVAHN. I do not.

Senator PRYOR. What do you mean by a "high error rate?"

Mr. SVAHN. That refers to the errors in a case decision which are determined by appeals council members at a higher level than the ALJ who hear the case. As I understand it, they look at it from two standpoints: procedural errors that would not affect the decisions and "serious" errors that would affect the decision. And what we are talking about in terms of a high error rate are "serious" errors only.

Senator PRYOR. Do you consider the program of accelerating social security disability reviews—do you consider that program to be a part of this administration's economic recovery plan?

Mr. SVAHN. I do not.

Senator PRYOR. I have obtained a copy of a memorandum dated March 13, 1981, I would like to place in the hearing record. I think this was after your nomination but before your confirmation as Commissioner of SSA. And this particular memorandum was from the Acting Deputy Commissioner—I wish I could pronounce this—Mr. Fred Schutzman, I guess. Is that correct?

MEMORANDUM

SOCIAL SECURITY ADMINISTRATION

DI-12

TO : All Regional Commissioners

DATE: MAR 13 1981

FROM : Fred Schutzman
Acting Deputy Commissioner (Operations)

SUBJECT: Implementing the Administrative Initiative in President Reagan's Economic Recovery Plan--Accelerating SSA's CDI Effort--ACTION

Attached is a decision memorandum I have signed which reflects our plans for getting the maximum number of title II continuing disability cases consistent with the present budget into the hands of the DDS's during the remainder of FY 1981. Also attached is information about how much each region must add to DDS staffing in order to process the FY 1981 cases. I am asking you to take these numbers and allocate them to the States in your region. Please note that these staffing targets are already funded in the allocations you have received. Further, the money already allotted for consultative examinations will be adequate to cover the cases being sent out.

The States should receive the title II cases shortly. Until they do, they should continue to work as many as possible of the nonrollback conversion cases already on hand. We plan to keep the pipeline full of title II cases. Should any State run out, however, they should process the nonrollback conversion cases until a new supply of title II cases reaches them.

You should continue your planning for FY 1982. We will get to you with the details concerning projected caseloads and staffing needs as quickly as possible.

We are developing a Program Circular to be distributed SSA-wide to describe the background and importance of this large scale effort. This will take some time to print and distribute. In the meantime, because DO understanding is a key factor in the success of this endeavor, I ask that you communicate with them through your channels to explain the large savings to the trust fund that will result as incorrectly paid beneficiaries are removed from the rolls and to prepare them to deal with the inquiries which can be expected.

I appreciate your prompt and thoughtful responses on increasing DDS staffing. Please keep us informed of any issues requiring central office action.

Attachments

BEST COPY AVAILABLE

Mr. SVAHN. Schutzman.

Senator PRYOR. And it was directed to all Regional Commissioners, and it was entitled, and I quote, "Implementing the Administrative Initiative in President Reagan's Economic Recovery Plan—Acclerating SSA's CDI—Action."

This was the title of this memorandum that went out to all the regions in the country relative to this particular disability review process.

Now, would you comment on that?

Mr. SVAHN. I would be pleased to, Senator. And I appreciate your noting the fact that that did not go out over my signature while I was Commissioner of Social Security. If, in fact, Mr. Schutzman signed that—Mr. Schutzman is a career civil service employee, I know that he has been in the Government at least 12 years, maybe longer—although he was in a position at the Social Security Administration I can assure you that Mr. Schutzman was not brought in by the Reagan administration. And I do not know what prompted him to give his memo that title.

But the continuing disability investigations were not enacted as part of the President's economic recovery program. The mandate for doing the CDI's was passed in 1980 and supported by the Carter administration. The so-called savings, if you will, that we are achieving through the continuing disability process is the same amount that was estimated by the Carter administration; so it did not begin as part of the President's economic recovery program.

Senator PRYOR. Do you think—you said you did not know about this or did not know he was writing this memorandum, but it actually went out to the regions. Do you feel that people's disability benefits ought to be placed in the hands of say someone who is not at the policy level or maybe someone who is in the area for finding budget reductions or accounting or what have you?

Mr. SVAHN. The determination of disability, as the Senator knows, is a task that is done at the State Disability Determination Service and is done by disability examiners. It is not done by a budget person or a person in a policy position or any place else. It is done by disability examiners.

Senator PRYOR. But this individual did state, or the implication was very clear, that the disability review process—in fact, the acceleration of the process—was part of the President's economic recovery program.

Mr. SVAHN. Well, as I said, I doubt very seriously whether that individual has ever spoken to the President. But what you are asking me is "is it correct that this individual signed the memo and does the memo say that?" You have the memo; I do not. I will take your word for it. I do not know why Mr. Schutzman did that, and I can assure you it is not part of the President's economic recovery program.

Senator PRYOR. Was he advised that that was not the policy?

Mr. SVAHN. Mr. Schutzman now is the Deputy Director of the Office of Child Support Enforcement and has nothing to do with that program.

Senator PRYOR. Well, was that a promotion for him?

Mr. SVAHN. That was a lateral transfer.

Senator PRYOR. How soon after that memorandum was the transfer made?

Mr. SVAHN. I do not recall. It was one of the earlier changes that we made when I took office.

Senator PRYOR. All right. Now, do ALJ's have quotas for the reversal rates?

Mr. SVAHN. They do not.

Senator PRYOR. Do they have targets?

Mr. SVAHN. They do not.

Senator PRYOR. Do they have goals?

Mr. SVAHN. No.

Senator PRYOR. Do they have expected levels?

Mr. SVAHN. Well, would you like me to explain how the process works?

Senator PRYOR. Not really, because I think I know how it works, and I think the chairman knows how it works.

Mr. SVAHN. There are no expected levels that an ALJ is supposed to maintain in terms of a reversal rate.

Senator PRYOR. All right. Then let us look at another memorandum dated April 30, 1982, from Levi J. Ogden.

Now, what is his position?

DEPARTMENT OF HEALTH & HUMAN SERVICES — Social Security Administration

Refer to: SORI

Memorandum

Date: APR 30 1982

From: Director, Office of Appraisal

Subject: Criteria for Removing Targeted ALJs from Review - (ES-2-1-12) -- DECISION

To: Mr. Louis B. Hays
Associate Commissioner
Office of Hearings and Appeals
Through: ES

PURPOSE

To develop procedures for removal of ALJs from the targeted review.

BACKGROUND

On February 1, 1982, OA released a decision paper entitled, "Criteria for Modifying the Population for the Targeted Ongoing Review." In this paper we discussed various alternatives for targeting ALJs for review and, because of improvements in performance, removing ALJs from review. You returned the paper with instructions to reconsider the removal criteria.

Specifically, you requested that we consider adjusting the percentages of cases for each ALJ reviewed. You believed more thought was needed on the time periods involved and expressed concern that judgment about the overall quality of ALJ decisions would play no role in the removal process.

DISCUSSION

As you know, since release of the first "criteria" paper, OAO, with our support, has instituted a procedure in which different percentages of cases are reviewed for separate groups of ALJs. There are four review groups: 25 percent, 50 percent, 75 percent and 100 percent. The principal element in deciding where to place an ALJ is the own motion rate, although judgment does also play some role in the placement of many of the ALJs.

The percentage system of review not only makes more effective use of OHA staff than does a straight 50 percent review, it also indicates in a formal way which ALJs are showing improvement in decisional quality and accuracy. We believe a logical extension of this procedure would be to limit consideration for removal only to those ALJs at the 25 percent review level. Adopting this basic proposal would ensure that a sufficient number of a particular ALJs'

BEST COPY AVAILABLE

cases have been reviewed to obtain an accurate "picture" of a targeted ALJ's decisions. We believe that a "sufficient number" should not be specifically defined in order to permit an element of flexibility in the total removal process. It will also permit the infusion of judgment in deciding which ALJs should be put in line for removal; that is, added to the 25 percent review group.

To actually remove a targeted ALJ from review, we believe that it is necessary to consider all aspects of an ALJ's performance, such as own motion rate, reversal rate, deficiency levels and productivity. But a focal point (the own motion rate) is also thought necessary in order to facilitate uniformity in a decision to remove an ALJ from review.

There is a direct relationship between own motion rates and reversal rates. High reversing ALJs are targeted because of the expectation that a significant number of their reversals are incorrect. If the own motion rate of a particular ALJ is lowered through the review and the feedback system associated with it, then necessarily, the reversal rate will decline. Relying upon own motion rates, then, as the focal point for removal will recognize this relationship and dovetail nicely with the notion that only those ALJs selected essentially by reason of their own motion rates to be in the 25 percent review category, are to be considered for removal from review.

The own motion rate can also be viewed as a measure of accuracy. An ALJ with a five percent own motion rate can be said to be 95 percent accurate. Using a measure of accuracy, rather than a measure of error, infuses a positive and easily recognizable element into the removal process.

The problem of review time at the 95 percent level of accuracy is not viewed as being especially critical. One month at this level should be sufficient since improvement must have first been shown in order for the ALJ to have been included in the 25 percent group.

OPTIONS

We have reworked the two options presented in our previous paper to better align them with our current thinking on the removal from review issue. Essentially, the options include the need for an ALJ to first be in the 25 percent category. Option 1 is now structured around the 95 percent level of accuracy as the focal point for the decision to remove an ALJ from review. We have also added a third option involving reversal rates as the basis for removal. Although our discussion was geared towards own motion rates, reversal rates do have an appeal if for no other reason than ALJs are targeted because of high reversal rates.

Option 1: ALJs in the 25 percent review category will be removed from review when the 95 percent level of accuracy has been approached and maintained for one month.

PROS

1. The 95 percent accuracy level should be seen as a rigorous commitment to quality performance.

BEST COPY AVAILABLE

2. It establishes a goal which is easily recognized and difficult to challenge on substantive grounds.

3. It is an uncomplicated method for removing ALJs.

4. Judgment is included in the removal process since approaching the 95 percent level of accuracy is not explicitly defined.

5. The 95 percent accuracy level (five percent own motion rate) can be readily determined from data derived directly from the review.

6. Since the own motion rate is related to the reversal rate, a lowered reversal rate will be an aspect of the removal process.

CON

1. Setting the accuracy level at 95 percent could slow down the removal process since a number of ALJs may never get sufficiently close to that level to warrant removal from review.

Option 2: ALJs in the 25 percent review category will be removed from review when their own motion rates approach the own motion rate for the random sample portion of the Bellmon review. This level of performance must be maintained for one month.

PROS

1. This is an uncomplicated method for removing ALJs from review.

2. Basing removal on an own motion rate derived from the random sample would effectively match ALJs against their peers.

3. Judgment is preserved in the decision to remove an ALJ from review.

CONS

1. The random sample own motion rate may itself be high.

2. There is no standard of acceptable performance.

3. With the accuracy of ALJ decisions receiving so much attention, basing removal from review on the performance of ALJs in general could leave us open to criticism.

4. It may require more than one quarter to derive with any degree of confidence an own motion rate from the random sample.

5. Depending upon the rate of own motion for the random sample, we might not be able to predict reduction in reversal rates.

BEST COPY AVAILABLE

Option 3: ALJs will be removed from review when their respective reversal rates are equal to or less than DHHS's fiscal year goals: FY82 - 57.3 percent; FY83 - 49.8 percent; FY84 - 45.2 percent.

PROS

1. This option places removal from review in the same terms used to add ALJs to the targeted review.
2. It establishes an easily recognizable goal.
3. It is an uncomplicated method for removing ALJs from review.
4. Since reversal rates and own motion rates are related, a reduction in one will mean a reduction in the other.

CONS

1. There may be serious political and legal ramifications to basing removal from review on reversal rates.
2. Reversal rate data is not directly obtainable from the Bellmon review.
3. An ALJ with a relatively low reversal rate may still have a significant own motion rate.
4. ALJs in the 25 percent review category may never have reversal rates equal to less than SSA goals.

RECOMMENDATION

We recommend the adoption of Option 1. We believe it not only facilitates the uniform exercise of judgment, but it underscores the seriousness with which incorrect ALJ decisions are viewed. At the same time, it emphasizes the positive aspects of review, that is, accuracy versus error.

We see OA's role in this process as notifying OAO_x and OFA that an ALJ may be ready to be taken off review, soliciting their comments, advising the CALJ, and preparing the necessary memorandum for the CALJs signature.

DECISIONS

1. ALJs in the 25 percent review category will be removed from review when the 95 percent level of accuracy has been approached and maintained for one month.

APPROVED _____
DISAPPROVED _____
OTHER BSH - amend to read "and maintained for three consecutive months."
DATE 6/10/82

BEST COPY AVAILABLE

2. ALJs in the 25 percent review category will be removed from review when their own motion rates approach the own motion rate for the random sample portion of the Bellmon review. This level of performance must be maintained for one month.

APPROVED _____
DISAPPROVED RSH
OTHER _____
DATE 6/10

3. ALJs will be removed from review when their respective reversal rates are equal to or less than OHA's fiscal year goals.

APPROVED _____
DISAPPROVED _____
OTHER RSH - please note: there is no goal to reduce reversal rates - there is a goal to improve decisional quality & consistency which is assumed to have as one effect a reduction in the reversal rate
DATE 6/10

CONCURRENCE

AC:	Concur ____	Nonconcur ____ See Tab ____	Date ____
CALJ:	Concur ____	Nonconcur ____ See Tab ____	Date ____
Mr. Friedenberg:	Concur ____	Nonconcur ____ See Tab ____	Date ____
OPP:	Concur ____	Nonconcur ____ See Tab ____	Date ____
OAO:	Concur ____	Nonconcur ____ See Tab ____	Date ____
OFA:	Concur ____	Nonconcur ____ See Tab ____	Date ____
OSC:	Concur ____	Nonconcur ____ See Tab ____	Date ____

for James C. Mortimer
Levi J. Ogden

BEST COPY AVAILABLE

Mr. SVAHN. I have no idea.

Senator PRYOR. Director of Office of Appraisal. And this is addressed to Louis B. Hays, the Associate Commissioner, who I assume you know, Office of Hearings and Appeals. This memorandum is entitled "Criteria for Removing Targeted ALJ's From Review—Decision."

Now, the basic crux of this memorandum, the Office of Hearings and Appeals has goals of 57.3 percent for fiscal year 1982, 49.8 percent for fiscal year 1983, 45.2 percent for fiscal year 1984.

Now, do you have a comment on this particular memorandum?

Mr. SVAHN. Well, first my comment is I do not know who wrote it, I do not know why they wrote it, and I do not know what the goals are.

Senator PRYOR. It was written by Mr. Ogden, who is Director of the Office of Appraisal, to Louis Hays, Associate Commissioner, Hearings and Appeals. And this whole process that basically you structured within SSA, you said your policy has been implemented within SSA, and this is part of your policy.

Mr. SVAHN. Senator, what goals? A goal for what?

Senator PRYOR. A goal of 57.3 percent in reversal rates for fiscal year 1982, 49.8 percent in 1983, 45.2 percent.

Mr. SVAHN. Total reversal rate, is that what that is making reference to?

Senator PRYOR. Overall agency reversal rate.

Mr. SVAHN. Mr. Hays has as part of his program the desire to reduce the average reversal rate by ALJ's. I think that it is absolutely shocking that we have a 55-percent reversal rate. I am not blaming the ALJ's for that. There are a lot of ways to reduce the reversal rate. We can change policies. We can change procedures. We can change the rules. We can have everybody use the same criteria for determining disability. There are a lot of ways to reduce it. And I think the fact that we have a program where we deny 70 percent on the front end and by all reasonable estimates between 20 and 25 percent of the people who are on the rolls do not meet the criteria as established in the law, and then we have a 55-percent reversal rate on appeals, I think we have a problem in that program. We should bring all of those numbers down.

Senator PRYOR. If 55 percent is too high, then what would be the figure that would not be too high?

Mr. SVAHN. I do not know. I would like it to be that we do not have to worry about that, and we do not have appeals. We obviously are going to continue to have appeals. But when we deny 70 percent of the initial applications for disability insurance, it tells me that there is something about that program that Americans do not understand. Either that or there is something that the people who are running it do not understand.

And I think that it is the former, because people in the United States think that the disability insurance program insures them against being unable to do their former job, and it does not. It insures you against being unable to do any work.

Senator PRYOR. Let me say that in responding to this particular memorandum Mr. Hays says, "Please note, there is no goal to reduce reversal rates. There is a goal to improve decisional quality

and consistency, which is assumed to have one effect of reduction of the reversal rate."

So Mr. Hays in a more subtle way has said that the reversal rate must be touched by this particular avenue.

I think, too, Mr. Svahn, that as to this particular situation in the social security disability review area, I think, that it is very necessary that we look at the facts as they affect the individual State and region.

There are areas, for example, of our State of Arkansas which, have a very, very high elderly population. There are areas that do not have that high elderly percentage. But I think that we are not really looking at the various characteristics of each particular State.

I would also, Mr. Svahn, like to state that with regard to the administrative law judges it is my own feeling that there has been harassment. It may be subtle. You may not have known about it. It may not have come as high as you. It may not have been at your direction.

But I would like to submit for the record, Mr. Chairman, a statement of three administrative law judges who submitted an affidavit relative to the harassment that they have sensed and felt by or at the hands of those involved with this whole review process.

I think, too, that we could cite case after case from those stories that we heard testomony on at the Fort Smith hearing, Mr. Chairman—and I am not going to cite all of those horror stories, because very honestly, they are too numerous, and we have read about them, and I think we generally have an idea about what has happened to some of these people who for 15 years have drawn disability and have suddenly got a notice that their case was being looked at, that they were cut off the rolls, that their medicare was cut off simultaneously. And we see an horrendous situation.

In the lameduck session we did enact legislation which allowed the payments to continue during the appeals process for the recipient. I was one of the cosponsors of that original legislation.

Did you support that legislation?

Mr. SVAHN. Not only did I support that legislation, Senator, but I was pushing for legislation that would allow payment through an evidentiary hearing appellate level back as far as May of 1982, long before the lameduck or so-called lameduck session.

I think that if you look at the record—and I think the chairman mentioned that earlier this morning—if you look at the record that the Social Security Administration has over the past year and a half in trying administratively and legislatively to make the disability process objective and make it a fair process, and in fact in trying to humanize the process of disability determination, I think the record is fairly good. At the same time, we are carrying out our statutory requirement to review those cases.

Senator PRYOR. Well, you say that you supported giving the payments or providing the payments for those under the review process. That was in the lameduck session.

But in March, on March 16, 1982, you testified before the Subcommittee on Social Security in Ways and Means, and I will read you your statement.

First, section 2, making reference to this particular section, would allow the disability beneficiary that Social Security has determined had medically recovered to elect to have disability benefits continued up through the reconsideration stage of appeal. A beneficiary who lost the appeal would be required to repay the benefits.

And then this is the crux:

While we realize that termination of disability benefits often results in a difficult adjustment period for the beneficiary, this approach might encourage some frivolous appeals and add to our already large backlog of appeals which your bill is intended to reduce.

So in March of 1982 you certainly did not support this idea.

Mr. SVAHN. Well, I do not recall exactly, and you are saying that that is my statement before the committee. I said that in May of 1982 and thereafter we did support paying continued benefits through an evidentiary hearing level in place of the reconsideration process, and I will stand by that statement.

Now, if that was my statement or perhaps was someone else's statement in March of 1982, it may well have been the administration's position. It has not been an easy task to administer that program by any stretch of the imagination.

Senator PRYOR. We know it is not an easy task, but I just wanted to set the record straight that you did not support——

Mr. SVAHN. That is incorrect, Senator.

Senator PRYOR. Well, if you want to read it, you can. It says, "Statement of John Svahn." If you want to read it, it is right here.

Mr. SVAHN. I said I may not have supported it in March of 1982, but from May of 1982 on I did.

Senator PRYOR. Now, we have in the State of Arkansas 76 percent initial denial of claims. We are No. 1 in the Nation in this. We are last in a lot of things, I am afraid, but we are No. 1 in something, and that is that 76 percent of all Arkansas citizens who apply for disability are disallowed disability in the initial claim. We are No. 1.

Mr. SVAHN. That is correct.

Senator PRYOR. All right. We are also fourth lowest in allowing people to continue their benefits. In other words, we are seeing an enormous number of those who are allowed to receive initial benefits, we are seeing them cut off. We are fourth in the country in that area right now.

So the sad part about this system is that we have already in our State weeded out a lot of the frivolous cases, because only 24 percent draw the benefits; 76 percent do not get disability. And yet, we are under a mandate in our State, 100-percent review of every reversal made by an administrative law judge due to the fact that you say their error rate is too high.

Now, I wonder if you would comment on that.

Mr. SVAHN. Well, I think, Senator, that the statement is not quite correct. We did have the ALJ's in Fort Smith, Arkansas, under 100 percent review of all their decisions, I believe that ended in July of 1982 when these ALJ's were placed under the Bellmon review which include only allowance decisions. And as I said before, when it is determined that there are a high percentage of errors in the administrative law judge's decision, then they are put under the Bellmon review. If the error rate is high enough, it is a 100 percent review. One Fort Smith ALJ was placed in this

category in July 1982. When their error rate comes down, it goes to 75 to 50 to 25, and then they are put back into the regular random sample Bellmon review.

Now, about 50 percent of the Bellmon reviews that we do are because of high error rates. Another 25 percent are there because we review routinely new ALJ decisions, and another 25 percent are there because we review a random sample nationwide.

I am not absolutely certain, but I think that the single Forth Smith ALJ who was placed under 100 percent Bellmon review in July 1982 is no longer under 100 percent review, based on a decline in his error rate.

Senator PRYOR. I think, Mr. Svahn, that probably two of the ALJ's there, and conceivably all three of the ALJ's, were under review. It is probably included in their affidavit which is January 13, 1982—or 1983, pardon me.

AFFIDAVIT

Comes Francis Mayhue, after being duly sworn upon oath, and states:

1. I am an Administrative Law Judge employed by the Office of Hearings and Appeals, Social Security Administration, Department of Health and Human Services.

2. I am a member of the Association of Administrative Law Judges within the Department of Health and Human Services.

3. In January, 1982, I was summoned to Washington for "continuing education", and while in Washington I was advised by Bill Levere, a management employee of the Office of Hearings and Appeals, that a reversal rate of 45 to 55% was acceptable and that the reversal rate of the Fort Smith office, and particularly my reversal rate, was unacceptable.

4. From August 17, 1981, until July 1, 1982, I was under 100% review by the Appeals Council. This means that every decision, whether it be an affirmation, reversal or dismissal, was reviewed by the Appeals Council. This was subject to Order by Chief Judge Philip T. Brown. A copy of Judge Brown's Order is attached as Exhibit 1.

5. On July 1, 1982, I was notified by Judge Brown that I had been removed from 100% review by the Appeals Council and placed under "Bellmon Review". A copy of this Order is attached as Exhibit 2. This means that all reversal decisions have been reviewed by the Appeals Council pursuant to Section 304 of PL 96-265, commonly known as the Bellmon Amendment. A copy of this Public Law is attached as Exhibit 3. The Bellmon Amendment provided for ongoing review of decisions by Administrative Law Judges, but the Appeals Council adopted a policy of reviewing only reversal decisions wherein the Administrative Law Judge granted benefits to a claimant as opposed to a denial decision issued by an Administrative Law Judge. I am convinced that all of my reversal decisions have been reviewed by the Appeals Council and my reason for this

BEST COPY AVAILABLE

belief is contained in a memorandum from Louis B. Hays to all Administrative Law Judges, dated September 24, 1982. A copy of this memorandum is attached as Exhibit 4.

This statement is given by me on this 11th day of January, 1983.

Francis Mayhue
Administrative Law Judge

Subscribed and sworn to before me this 11th day of January, 1983.

Cathy A. Hicks
Notary Public

My Commission Expires:

My commission expires July [illegible] 1990

BEST COPY AVAILABLE

AFFIDAVIT

Comes David T. Hubbard, after being duly sworn upon oath, and states:

1. I am an Administrative Law Judge employed by the Office of Hearings and Appeals, Social Security Administration, Department of Health and Human Services.

2. I am a member of the Association of Administrative Law Judges within the Department of Health and Human Services.

3. From August 17, 1981, until July 1, 1982, I was under 100% review by the Appeals Council. This means that every decision, whether it be an affirmation, reversal or dismissal, was reviewed by the Appeals Council. This was pursuant to Order by Chief Judge Philip T. Brown dated July 29, 1981. A copy of Judge Brown's Order is attached as Exhibit 1.

4. On July 1, 1982, I was notified by Judge Brown that I had been removed from 100% review by the Appeals Council and placed under "Bellmon Review". A copy of this Order is attached as Exhibit 2. This means that all reversal decisions have been reviewed by the Appeals Council pursuant to Section 304 of PL 96-265, commonly known as the Bellmon Amendment. A copy of this Public Law is attached as Exhibit 3. The Bellmon Amendment provided for ongoing review of decisions by Administrative Law Judges, but the Appeals Council adopted a policy of reviewing only reversal decisions wherein the Administrative Law Judge granted benefits to a claimant as opposed to a denial decision issued by an Administrative Law Judge. I am convinced that all of my reversal decisions have been reviewed by the Appeals Council and my reason for this belief is contained in a memorandum from Louis B. Hays to all Administrative Law Judges, dated September 24, 1982. A copy of this memorandum is attached as Exhibit 4.

5. On December 29, 1982, Philip T. Brown, Chief Administrative Law Judge, directed a letter to me which states:

BEST COPY AVAILABLE

"As you know, Section 304 of PL 96-265 generally referred to as the Bellmon Amendment, requires an ongoing review of ALJ decisions. In its review, the AC has taken own motion action in a number of decisions you recently issued. Essentially, the problems identified concern or are related to your evaluation of 'disability' within the regulatory frame work, as well as incomplete or incorrect assessment of the medical evidence before you.

We firmly believe that a system of timely information feedback is an effective training device to assist an ALJ in mastering claims adjudication policies, procedures, and techniques. You will be contacted in the near future by the Regional Chief Administrative Law Judge concerning an informational session in which the identified problems will be discussed. Deputy Chief ALJ Irwin Friedenberg will be present at this meeting.

Our objectives are to provide individual guidance and to improve the overall quality and consistency of the decision making process. Peer counselling is a fundamental part of achieving these goals."

6. Following receipt of this document I directed a letter to Judge Brown asking him for his statutory authority for the "peer counselling" provided in his December 29, 1982, letter. To date, Judge Brown has not responded although Judge Brown has received the letter. A copy of the letter, as well as a copy of the return receipt, are attached hereto as Exhibit 5.

7. On January 10, 1983, I was advised that I will be expected to appear in Dallas, Texas, on January 19 or January 20, 1983, for the purpose of "peer counselling", and the "peer counselling" will be conducted by Regional Chief Administrative Law Judge Harold Adams and Deputy Chief Administrative Law Judge Irwin Friedenberg. I am convinced that the current directive to attend the peer counselling is an action to harass me and is intended to affect my decisional independence, and the sole reason is to cause me to allow fewer claims. This violates my decisional independence and my rights as provided for by the Administrative Procedure Act as codified in Title V of the United States Code.

This statement is given by me on this 11 day of January, 1983.

David T. Hubbard
Administrative Law Judge

Subscribed and sworn to before me this 11th day of January, 1983.

My commission expires July 8, 1990

BEST COPY AVAILABLE

AFFIDAVIT

Comes Jerry Thomasson, after being duly sworn upon oath, and states:

1. I am an Administrative Law Judge employed by the Office of Hearings and Appeals, Social Security Administration, Department of Health and Human Services.

2. I am a member of the Association of Administrative Law Judges within the Department of Health and Human Services.

3. In my position as Administrative Law Judge, I am also the Administrative Law Judge In Charge of the Fort Smith, Arkansas, Hearing Office.

4. I have been subject to harassment and intimidation since December, 1981. In December, 1981, Don Prezbylinski, a special assistant to Louis B. Hays, Associate Commissioner of the Office of Hearings and Appeals, appeared at my office without notice. He advised me he had been sent by Mr. Hays to conduct an investigation of the office and further advised me that there would be no peace in the Fort Smith office until the Administrative Law Judges in the Fort Smith office had satisfied Martha McSteen, Regional Commissioner of the Dallas Region of the Social Security Administration, that our reversal rate had been substantially reduced.

5. In January, 1982, I was summoned to Washington for "continuing education", and while in Washington I was advised by Bill Levere, a management employee of the Office of Hearings and Appeals, that a reversal rate of 45 to 55% was acceptable and that the reversal rate of the Fort Smith office, and particularly my reversal rate, was unacceptable.

6. I was again summoned to Washington in May, 1982, and during my visit to Washington I was required to sit in for one week of training with a new class of Administrative Law Judges. In a conversation with Irwin Friedenberg, Deputy Chief Administrative Law Judge, Judge Friedenberg stated:

"There must be something wrong in the Fort Smith Hearing Office with so many people being paid."

7. From August 17, 1981, until July 1, 1982, I was under 100% review by the Appeals Council. This means that every decision, whether it be an affirmation, reversal or dismissal, was reviewed by the Appeals Council. This was subject to Order by Chief Judge Philip T. Brown. A copy of Judge Brown's Order is attached as Exhibit 1.

8. On August 27, 1982, I was notified by Judge Brown that I had been removed from 100% review by the Appeals Council and placed under "Bellmon Amendment" review (Exhibit 2). This means that all reversal decisions have been reviewed by the Appeals Council pursuant to Section 304 of PL 96-265, commonly known as the Bellmon Amendment. A copy of this Public Law is attached as Exhibit 3. The Bellmon Amendment provided for ongoing review of decisions by Administrative Law Judges, but the Appeals Council adopted a policy of reviewing only reversal decisions wherein the Administrative Law Judge granted benefits to a claimant as opposed to a denial decision issued by an Administrative Law Judge. I am convinced that 100% of my reversal decisions have been reviewed by the Appeals Council and my reason for this belief is contained in a memorandum from Louis B. Hays to all Administrative Law Judges, dated September 24, 1982. A copy of this memorandum is attached as Exhibit 4.

9. In October, 1982, I was attending a Management Seminar in Dallas, Texas, wherein I was told by Harold Adams, Regional Chief Administrative Law Judge, that "the congressmen may be happy with the reversal rate in the Fort Smith Hearing Office, but I can assure you that no one else is". In my conversation with Judge Adams, he indicated that there was serious thought in Washington being given to closing the Fort Smith Hearing Office.

10. On December 29, 1982, Philip T. Brown, Chief Administrative Law Judge, directed a letter to me which states:

"As you know, Section 304 of PL 96-265, generally referred to as the Bellmon Amendment, requires an

BEST COPY AVAILABLE

ongoing review of ALJ decisions. In its review, the AC has taken own motion action in a number of decisions you recently issued. Essentially, the problems identified concern or are related to your evaluation of 'disability'.

We firmly believe that a system of timely information feedback is an effective training device to assist an ALJ in mastering claims adjudication policies, procedures, and techniques. You will be contacted in the near future by the Regional Chief Administrative Law Judge concerning an informational session in which the identified problems will be discussed. Deputy Chief ALJ Irwin Friedenberg will be present at the meeting.

Our objectives are to provide individual guidance and to improve the overall quality and consistency of the decision making process. Peer counselling is a fundamental part of achieving these goals."

11. Following receipt of this document I directed a letter to Judge Brown asking him for his statutory authority for the "peer counselling" as provided in his December 29, 1982, letter. To date Judge Brown has not responded although Judge Brown has received the letter. A copy of the letter, as well as a copy of the return receipt, are attached hereto as Exhibit 5.

12. On January 10, 1983, I was advised that I will be expected to appear in Dallas, Texas, on January 19 or January 20, 1983, for the purpose of "peer counselling", and the "peer counselling" will be conducted by Regional Chief Administrative Law Judge Harold Adams and Deputy Chief Administrative Law Judge Irwin Friedenberg. I am convinced that the current directive to attend the peer counselling is an action to harass me and is intended to affect my decisional independence, and the sole reason is to cause me to allow fewer claims. This violates my decisional independence and my rights as provided for by the Administrative Procedure Act as codified in Title V of the United States Code.

This statement is given by me on this 11 day of January, 1983.

Jerry Thomasson
Administrative Law Judge

Subscribed and sworn to before me this 11th day of January, 1983.

Kathy A. Hicks
Notary Public

My Commission Expires: My commission expires July 8, 1990

BEST COPY AVAILABLE

Senator PRYOR. Mr. Chairman, I only have maybe one other question. I may want to submit a few other questions for the record for Mr. Svahn. We have discussed these matters by phone, and I am just very concerned about this huge Department. How many dollars did Mrs. Heckler say she was going to be responsible for expending—$200 and some odd-million?

Mr. SVAHN. $278 million.

Senator PRYOR. And when she is not around, you are going to be the man running the store, and there is no question about the enormity of your responsibility and your challenge. And I would like to state for the record that I have got some concerns about your nomination; I am not saying that I am going to oppose it. But I really think for this particular job I do have some concerns. I hope that you have attempted to answer our questions as forthrightly as possible. I would like to thank you for your appearance this morning.

Mr. SVAHN. Thank you, Senator.

The CHAIRMAN. Well, any other questions you have, obviously we can come back at 2, or we can submit them in writing. I think Senator Bradley had a couple of questions he would like to address, and maybe we could conclude it now.

Senator BRADLEY Thank you, Mr. Chairman.

I would like to submit a number of questions in writing to Mr. Svahn, if I could, and get his response. They will be questions similar to those that Senator Pryor has addressed.

In New Jersey we have a situation where we have over 81,000 people on disability, and we had about 6,000 knocked off. And my concern is, one, Senator Pryor's concern to make sure that there has been no pressure brought to get the administrative law judges not to meet legitimate appeals.

But the second question I have is one that I could document with any number of letters that I have with me today that are written by New Jerseyians who have been knocked off the system. And the issue is clearly if someone has no real claim, then he should not be or she should not be on disability. But there are legitimate cases where the person does have a serious disability but does not quite meet the eligibility criteria. It is like a cliff; they move along, and then they drop off that cliff.

And my question to you is what do you propose to do about these people who are in serious need but who do not quite meet the eligibility criteria?

Mr. SVAHN. We all recognize, Senator, that the disability insurance program is not a means-tested program. It is designed for people who are disabled and are prevented from doing any work in the economy.

And I agree with you there is, if you want to call it, a "cliff". A person is either disabled or not disabled, and there are a number of people who themselves definitely feel that they are disabled and should be entitled to disability insurance. In fact, they might well have received a disability retirement from the company that they were working for, and they might well be receiving payments under a private disability insurance policy.

But the fact of the matter is that as the statute is written, they are not disabled for purposes of the disability insurance program.

Senator BRADLEY. So that your answer is essentially yes, there is a cliff there, and if because of the way the program is administered or the eligibility criteria that exists, if someone drops off the cliff, they drop off the cliff.

Mr. SVAHN. Well, let us just say they are not eligible for the program.

Senator BRADLEY. Right. Which is the same thing.

I hope that we could maybe establish some kind of dialog to try to address this problem, because this is a serious issue with a great number of people. And if there were some way that we could develop a kind of phase or some way where you could get something for people who genuinely have a serious problem but then they do not meet the specific criteria, I would appreciate that very much.

Mr. SVAHN. I would be glad to work with the committee, with the Senator, and with the Senate and the House.

Senator BRADLEY. All right. Then I just have one last question.

In the early months of the administration, many people were terminated from disability insurance without ever really having been seen, and in some cases they were terminated if they did not answer a letter. And my question is have you put in mechanisms to counter this problem that was quite evident in the early phases?

Mr. SVAHN. We certainly have, Senator, and we have worked with this committee in passing legislation. But we have done a number of things administratively to change——

Senator BRADLEY. Could you enumerate those things?

Mr. SVAHN [continuing]. To change the program administratively.

I think the most important thing—and it is something that I recognized early on—is we now have a personal contact with the beneficiary at the start of the disability investigation rather than just sending a notice. This previous practice was not a process that was started in March 1981; this is a process that existed since they started doing disability reviews a number of years ago.

One of the things that I noticed right away was we sent a notice to somebody that says you are under investigation. The next thing they hear, they get a notice that says you are not disabled, and we have also determined that you were not disabled 5 years ago, and you owe us $30,000.

Senator BRADLEY. Yes. This happened. I had a number of town meetings where a lady presented me with a bill due that she owed the Government $20,000.

Mr. SVAHN. Absolutely. And when I found out about that, I changed the policy.

Senator BRADLEY. What did you do?

Mr. SVAHN. I said the person is not to be determined not disabled retroactively, and that if we make a determination or if the State agency makes a determination that says that this individual is not disabled, the date of termination should generally be the same date that the person is notified. And since the termination is not retroactive, we no longer have to seek to collect past debts from those individuals.

At the same time, as I said, there was only a notice going out we discussed within the administration where the resources were going to come from. We allocated 1,100 work years to providing face-to-face interview for people who were going to undergo a continuing disability investigation.

And instead of sending them a notice saying we are doing it, we send them a notice now and ask them to come into the district office. We are developing a disability specialty in the district office. The people come in, sit down. We explain to them the process. We explain to them what their responsibilities are. It helps us get medical evidence, better medical evidence from them. We explain what our responsibilities are and what is going to happen, and it provides a focal point for individuals to come to.

Senator BRADLEY. Let us say you sent a letter to someone to come into the office for a face-to-face interview. How long do you wait before you then act to terminate?

Mr. SVAHN. I honestly do not know, Senator.

Senator BRADLEY. So this varies from office to office?

Mr. SVAHN. No. I am sure there is a standard. You mean if the individual does not respond. If they do not respond to the first letter, we send them a second letter. I do not know how long a period of time transpires between the two letters. If they do not respond to the second letter, I am not sure we send a third letter. We may send someone out to their last known address.

Senator BRADLEY. But there is a time.

Mr. SVAHN. Yes, there is.

Senator BRADLEY. Could you provide that for the record?

Mr. SVAHN. Yes, I will.

[The information follows:]

Our local Social Security offices begin a continuing disability investigation with a notice to the beneficiary that either asks him to come into the office for an interview at a specific time or asks him to come into the office for an interview within a certain time (usually 2 weeks).

If the beneficiary's address is correct but he does not respond, the local office usually tries to reach him by telephone and always sends out a second notice. This notice asks the beneficiary to contact the office within 10 days and advises him that his benefits may be stopped if he does not. The office will wait 5 more days after the 10 days to allow for delays in mail delivery. If the beneficiary does not respond to the second notice and any other attempts to reach him have failed, the local office forwards the file to the State agency.

I must emphasize that throughout this process our policy is to assume that the beneficiary is unable rather than unwilling to cooperate with our requests, and we make every effort to find out why he is not cooperating. For example, if the beneficiary is mentally impaired, we may try to contact relatives or friends who could assist him. If anyone else is receiving benefits based on his record, we always contact them before stopping benefits. In some cases, we will send an SSA employee to the beneficiary's home to contact him.

If the person cannot be located at the address in SSA records, our local office contacts the Postmaster to obtain the beneficiary's current address. If the Post Office cannot supply the address, an SSA employee visits the beneficiary's last-known residence and asks persons such as his landlord, neighbors and local merchants for information and will contact other persons receiving benefits based on his record. (If he has a history of mental illness, for example, the local office may contact institutions to which he had previously been admitted.) When the local office cannot locate the beneficiary, we suspend benefit payments and, in most instances, forward the file to the State agency.

We are now issuing instructions clarifying the role of the State agency in cases where the beneficiary has not responded or we have been unable to locate him. New instructions are needed due to introduction of the initial face-to-face interview and

passage of P.L. 97-455, but State agency procedures are already generally consistent with the new instructions.

The State agency reviews the file to make sure that the local office made every effort to locate the beneficiary or secure the beneficiary's cooperation and returns the case to the local office if further work is needed. If the beneficiary is located or first begins to cooperate after the case reaches the State agency, the State agency returns the case to our local office to be sure the beneficiary has the benefit of a face-to-face interview.

Only in the rare cases in which all our efforts to locate the beneficiary or to secure his cooperation have failed does the State agency make a determination that disability has ceased and benefits must be terminated. Even then the State agency sends another notice to a beneficiary who has failed to cooperate telling him that his benefits will be stopped unless he contacts the local office in 10 days. In both cases—where the beneficiary cannot be located or will not cooperate—he is given full appeal rights following a decision to terminate. Less than 3 percent of CDI terminations are due to inability to locate the beneficiary or to his failure to cooperate.

Senator BRADLEY. Thank you very much, Mr. Chairman.

Thank you, Mr. Svahn.

The CHAIRMAN. Thank you, Senator Bradley.

And I also want to thank Senator Pryor, because this is a matter that is of deep concern to him, and I would hope that he might have a chance to visit personally, privately, whatever, publicly about it, because he is not one to ask questions just to take up the time. He has a real concern. He is a solid member of this committee, the newest member of this committee, and we want those concerns addressed. So if there are some areas that should be further explored, I would hope that you would have a chance to see Senator Pryor about it or his staff about it.

Mr. SVAHN. I would be pleased to, Mr. Chairman.

The CHAIRMAN. But I would also say this program has exploded literally in the past decade, and it is up to about $19 billion a year now, and there is a reason for the periodic review. And I commend those in 1980—I am not trying to pass the buck back to the other administration—for at least urging us to take a look at some of these cases. And I hope that we are not going to back away from that commitment. We made some changes in the lameduck session. You did support those changes. In fact, you met with a number of Senators. That may vary from your earlier position. A lot of people have varying positions around this place. Sometimes they see the light, and they change their mind.

But I wanted to go back to the Hitachi. I do not want to leave any wrong impression. I think there are Hitachi computers that are going to be purchased, but that was not the question. The question was whether you are dealing with the Hitachi Corp., and the answer was "no".

Mr. SVAHN. That is correct.

The CHAIRMAN. And then you asked if you could expand on that question, and Senator Pryor said no, it was not necessary; but I think just for the record so people do not walk out of here saying you did not level with them, give us a little background on that.

Mr. SVAHN. I appreciate that, Mr. Chairman.

Yes; I answered Senator Pryor's question by saying that we do not have a contract. We did not buy computers from the Hitachi Corp. We have recently purchased two high-powered computers which happen to be manufactured by Hitachi. We bought those computers in compliance with the General Services Administration procurement regulations from a U.S. company. The U.S. company

is a subsidiary, a wholly owned subsidiary of another U.S. company who bought them from Hitachi. And we had no choice. They had the bid, and their bid was about 60 percent less than the second lowest bidder, and we had to buy the two computers. And so we do have them, but we are not dealing with the Hitachi Corp.

The CHAIRMAN. Now, you are going to be looking at child support enforcement in your new role, and I hope that is an area that you will look at very carefully. That has been a successful program. There were efforts, I think—and I cannot recall—some efforts to reduce the funding for that.

Mr. SVAHN. It was reduced, Mr. Chairman.

The CHAIRMAN. But I would hope that—this is a very important program and I think a very good program.

And with reference to ALJ's, we did not just write in to the statute in 1980 that you review the cases. I think there was—in fact, we have a little document dated August 1982 which talks about the social security disability program, which reviews a number of the concerns we had in 1980, and one was the ALJ's—some of the productivity, some of their decisions.

And I do not suggest that Senator Pryor is trying to set them apart, but they may, I think, perhaps look at their work. It is not illegal.

Mr. SVAHN. No. And I think, Mr. Chairman, that the vast majority of the members of the administrative law judge corps in the Social Security Administration agree with that point, and also would disagree with some of the allegations that have been made by a few.

I have been forthright with the committee in the fact that we do not have quotas, we do not have goals, and we do not require or pressure administrative law judges to make decisions in either direction. And I think that I am quite personally upset by the allegations that that statement is not true.

Senator Pryor was—and I am sorry he left—quoting from various memos. I have one here from an administrative law judge who says, and I quote, "I was appalled to read that it had been alleged that a quota had been imposed or that pressure had been applied to deny a certain percentage of claims." He says, "Such allegations demonstrate a lack of integrity," and it goes on and on.

So the position that is being taken, in the corps right now by a few is not necessarily the position of all of the administrative law judges. By and large they do a good job. They have a very, very large backlog and are under an awful lot of pressures from a lot of different areas, and I think that by and large they do a good job.

The CHAIRMAN. But I think a lot of those pressures the Congress generated. It was not somebody in the administration, in the past or present administration. I think Congress passed an amendment in 1980 which said, what, 3 years, review all the cases in 3 years?

Mr. SVAHN. Yes. And added an amendment to that set of amendments which said also review on a regular basis the decisions of ALJ's.

The CHAIRMAN. So I suggest if you are carrying out what Congress said you should do—and if we do not like that, we ought to change the law—we cannot hardly require you to not do what we mandate and then criticize you for doing it.

But there are some concerns, and they are real concerns, and concerns expressed by Senator Pryor and Senator Bradley and others. And we would hope that in your new role, because I feel that you should and will be confirmed, that you will keep in constant touch with the members of this committee.

Is there anything else you want to add as you leave?

Mr. SVAHN. No.

Thank you, Mr. Chairman. I appreciate your comments.

The CHAIRMAN. We will take up the nomination then next Wednesday. We have an executive session. And maybe between now and Wednesday you would have another chance to visit with Senator Pryor.

Mr. SVAHN. I would be glad to.

The CHAIRMAN. We stand in recess.

[Whereupon, at 12:45 p.m., the committee stood in recess, subject to the call of the Chair.]

[By direction of the chairman the following communication was made a part of the hearing record:]

CLUB OF LIFE

In Washington: 223-5614

April 24, 1983 -- Testimony on the Nomination of Margaret Heckler for Secretary, Department of Health and Human Services

by Nancy Spannaus, U.S. Director, Club of Life

In the context of the present world depression, the Department of Health and Human Services has an awesome responsibility to maintain its mandate for implementing programs based on respect for the sanctity of human life. While surrounded on every side by demands for cost-cutting, the HHS and its Secretary have the responsibility to guard against the growing pressures and justifications of infanticide and euthanasia. The Administration took an admirably strong stand on this question last year in response to the judicial murder of Infant Baby Doe through the refusal of medical treatment, when President Reagan announced the policy of cutting off aid to any government-subsidized medical institution which denied care to the handicapped. If combined with the positive approach to health care epitomized in the National Institute of Health project around the artificial heart, this Reagan Administration approach has the capability of avoiding the moral abomination of the Nazi "useless eater" policy, and moving on to a policy of health and human services appropriate to a twentieth century society based on the Judeo-Christian ethic of respect for the individual human life.

While many see a conflict between the exigencies of the current economic depression and improving human services, we in the Club of Life can assure you that the resources exist to solve these problems in the very immediate future. The key to the solution lies in the fostering of science, and its application through technology in industry, medicine, and agriculture. Under this policy EVERY individual human being is valued for his or her potential contribution to advances in human knowledge and mastery of nature. Instead of treating population growth as a threat to some allegedly fixed supply of resources, this scientific, pro-life approach recognizes that the world needs many more people to participate in developing new resources and knowledge.

Let us briefly explain how this approach solves the seemingly impossible conflict between morality, and resources in health care and social security.

The prototype of the approach to health care can be seen in the spectacular development of the artificial heart. The technology for developing this potential lifesaver of millions of older Americans was first developed through the Apollo project for landing a man on the moon. Despite a drastic cutback in funding during the de-escalation of the NASA space exploration program, the research on materials and power sources went slowly forward. Scientists and technicians associated with the NASA program indicate that with mass production, the cost of the heart could be reduced manyfold, and a power source could be developed which would be internal to the heart, removing all the dangers of an external source.

The research and development approach, relying on the highest technology available in society, that has been exemplified in the case of the heart, has been the key to the development of the antibiotics, artificial limbs, and many other "wonder" treatments for disease that return individuals to a productive life, and are now common occurrences. It is not only a setback, but criminal malfeasance for us to be cutting back on basic research and development and high-technology health care which serves not only our historical commitment to the sanctity of the individual human life, but also enriches our national life socially and economically.

With the same approach we could simply solve the Social Security problem as well. The primary reason for a crisis in the Social Security fund that is leading us to chisel on our senior citizens and grossly overburden young workers coming into the workforce is the lack of sufficient productive employees in the economy to contribute to the Social Security fund. The short-term reason for this shortage is the economic depression which took off under the usurious interest rate policy of Federal Reserve chairman Paul Volcker in October 1979, and has consistently strangled our productive industries, urban centers, and so forth. The longer-term reason is the drastic decline in population growth in the United States which now threatens to leave us bereft of whole categories of skilled workers and scientists--a problem which has potentially much longer, if not irreversible, consequences than the immediate shortage of revenues.

The threat in both of these cases of practical problems to be solved is not objective. The problem is cultural pessimism and Malthusianism. The purveyors of Malthusianism, centered in the Club of Rome, tell us that technology is our enemy, rather than

BEST COPY AVAILABLE

being the means for us to increase our power over nature and therefore our wealth. It tells us that we have too many people--but encourages us to abandon all of the advanced technologies such as nuclear fission and nuclear fusion which have the demonstrable power to bring the living standard of the entire world's population up to that of the American population and beyond. Malthusianism tells us we must kill up to 2 billion people in order to preserve our "living space." The Malthusians are genocidal liars.

Yet Malthusianism took a strong hold over the U.S. during the Carter Administration, leaving us the Global 2000 report that predicts disaster due to population growth, but totally ignores all the technologies at our fingertips to solve all those problems and more so. Now what the liberals in the Carter Administration proposed as ideology, many conservatives in and around the Reagan Administration are justifying on a cost-accounting basis. Those who argue against nuclear power, or the NASA program, or high-technology medical programs on the grounds that "they cost too much" are either totally ignorant, or evil liars. Every study available indicates that the NASA program, for example, COST US NOTHING, in fact returning more than $10 to the economy for every $1 spent.

Unfortunately, some of the individuals who head the Malthusian movement--in the Club of Rome, the World Wildlife Fund, and the Sierra Club--are documentably consciously evil. They are aware that implementation of the high technology health care measures and other benefits of modern science save millions of lives, and they oppose them for that reason. They are aware for example, that the banning of pesticides like DDT by the Carter Administration has by all best estimates caused the annual death of 60 to 100 million people due to the resurgence of deadly malaria.* They are aware that the cutting back on nuclear power -- the safest power source man has ever developed -- has led to the death of over 100 million people in the Third World from lack of electricity and other benefits associated with cheap, abundant power.

Hear the World Wildlife Fund and the Club of Rome rave:

Said Mohamed Kassas of the Club of Rome: "There are too many people, too much demand...There are too many people requiring too many things...There must be a ceiling for every population... You cannot let population increase indefinitely...that is irresponsible."

Why they consider it irresponsible is best expressed by Club of Rome cofounder Alexander King, in an interview in 1982. King said, "There is not room enough (on earth) for our little yellow, black, and brown brothers."

Why? Only because these Malthusians deliberately suppress technologies like the artificial heart, or scientific discoveries like DDT, or cheap abundant energy like nuclear power.

The Health and Human Services administration must take the lead in rejecting this racist, evil, pseudoscience. By promoting technology and population growth and science, it must implement programs based on th sanctity of every single human life.

From this standpoint, the Club of Life would like to address certain questions to Mrs. Heckler:

1) Does she support the President's stated strong position against infanticide and euthanasia of the "handicapped" and "aged" as reflected in President Reagan's response to the murder of Baby Doe, and reject the cost-accounting approach that leads to such murder?

2) Will she continue to promote, and in fact accelerate as necessary, the research programs that produced the first artificial heart and the myriad of research programs on cancer and other diseases that were downgraded during the Carter Administration in the interest of so-called preventative medicine?

3) Our sources indicate to us that Mrs. Heckler took a prominent role as a Congresswomen in promoting the ban on DDT. Given the evidence that this ban has led to mass murder in the developing sector through disease, and to uncountable destruction of agriculture by pests left alive by the DDT ban, will Mrs. Heckler reject this Malthusian proposal in favor of the American ethic of putting the lives of human beings above that of birds and other lower species?

If Mrs. Heckler can answer yes to these questions, the Club of Life can give her its qualified support. If she cannot, the Senate must vote to deny confirmation.

* Cf. the work of Dr. J. Gordon Edwards, professor of entomology at San Jose State University, including a speech given Feb. 18 in Washington, D.C. at the Club of Life conference.

BEST COPY AVAILABLE